Complaint No 1421/4/22/37

M/s Swastik Industries
Vs
Himachal Pradesh State Electricity Board Ltd and Ors

BRIEF FACTS OF THE CASE –

(1) Complaint has been filed under regulations 16, 17 and 18 of the HPERC (Consumer Grievances Redressal Forum and Ombudsman) Regulations, 2013;

(2) The Complainant M/s Swastik Industries, Plot No 41-42, Sector 1, Industrial Area, Parwanoo, District Solan (HP)-173220, bearing consumer ID 100012000705 is a Large Industrial Power Supply (LIPS – HT) category consumer of the Respondent HPSEBL;

(3) On 30.03.2010, the Original or Permanent sanctioned Contract Demand of the Complainant was 750 kVA, which was reduced by the Complainant to 500 kVA on 12.10.2012 (Annexure C1 Colly);

(4) Thereafter in September 2014, the Complainant temporarily revised its Contract Demand (Temporary Contract Demand) to 450 kVA (Annexure C3);

(5) The instant matter is regarding raising of monetary demand (in Rs) by the Respondent HPSEBL to the Complainant vide Demand Notice dated 16.11.2022 (Annexure C3) for the period of 42 months from May 2019 to October 2022, pursuant to HP Electricity Supply Code (Second Amendment) Regulations, 2018 which was notified on 31.07.2018 and which became effective from 01.04.2019 (here-in-after referred to as Supply Code 2nd Amendment, 2018 or Supply Code 2nd Amendment).

COMPLAINANT –

(6) Per Complainant, its Contract Demand was reduced from 750 kVA to 500 kVA in the year 2012. This was done by way of Application and Agreement Form (Annexure C1 Colly) and processing fees of Rs 6250/= calculated at the rate of Rs 25/= per KVA and which was deposited on 12.10.2012;

(7) However, Respondents continued to issue bills from November 2012 to August 2014 on the basis of 750 kVA, resulting in excess charges of Rs 11,25,000/= (Annexure C2). The Complainant is aggrieved by the action of the Respondent, due to which huge liability has been determined on the Complainant;

(8) This action of the Respondent is against Section 43(1) of the Electricity Act, 2003 and in contravention to the provisions of HPERC (Standards of Performance) Regulations, 2010;

(9) The Complainant is thus liable to be compensated in accordance with HPERC (Standards of Performance) Regulations, 2010 and also deserves refund of ibid excess charges of Rs 11,25,000/= (Annexure C2) recovered from it

(10) On 16.11.2022, the Respondent sent a notice (Annexure C3) to the Complainant, demanding arrears of Rs. 28,35,000/- on account of demand charges stating that the same were to be levied on the basis of 750 kVA rather than 450 kVA calculated since 01.04.2019;

(11) The Complainant contends that the impugned Notice if at all to be issued, should have been done considering Contract Demand of 500 kVA and not 750 kVA;

(12) The Complainant further contends by way of arguments and questions to the Forum –

(13) whether Code 3.10 of ibid Supply Code 2nd Amendment, 2018 notified on 31.07.2018 is applicable to reduction of contract demand prior to the date of said amendment and that the amendment no-where states that consumers who were already being billed under the temporarily reduced contract demand prior to the notification of 2nd Amendment shall fall in the purview of the new mechanism. It is beyond doubt that the said amendment would be affected on the future applications for temporary revision of the contract demand. The Complainant's Contract Demand for billing purposes was reduced temporarily in the year 2014, when the rules permitted such reduction to continue for an indefinite period. The said amendment cannot be applied in the present case where the Contract Demand was reduced many years before the amendment came into existence. At least a notice to such change should have been given well in time by the Respondents rather than later claiming the arrears;

(14) whether the 2nd amendment in reference to clause 3.10 was implemented by the Respondents as per intentions of amendment in manner that it was notified—The Note in the amendment has totally been ignored. The Respondents during this period of eight months should have issued notices to such consumers who were likely to be affected by the changed provisions to act well in time in accordance with the changed provision. The Respondents inaction has now resulted in the financial liability that has been transferred to the Complainant. The Respondents should have raised bill on the basis of full sanctioned Contract Demand in the month immediately falling after the expiry of the six months period that is allowed by the amended regulations. In other words, six months from the effective date (01.04.2019) of the said amended

provision, which expired on 30.09.2019. The subsequent bill issued for the month of October 2019, should have been issued on the basis of sanctioned Contract Demand which in this case was to be 500KVA. The Complainant would have noticed the same and would have taken adequate steps so that the arrears do not get accumulated and the Complainant would have permanently reduced the Contract Demand from the following month (Nov 2019) onwards, which was well with the rights of the Complainant. The Respondents choose to remain silent in order to financially benefit from the amended provisions at the cost of the Complainant and thereafter issued demand notices for the arrears. The Respondents thus do not deserve to recover such arrears, as they had not issued proper bills, which has resulted in financial loss to the Complainant. The Complainant cannot go backwards in time to apply for permanent reduction retrospectively;

(15) The Complainant has sought relief in terms of quashing of Demand Notice dated 16.11.2022 (Annexure C3) for Rs 28,35,000/= and for refunding overcharged amount of Rs 11,25,000/= from year 2012 to 2014 and compensation in accordance with section 43(3) read with HPERC (Standards of Performance) Regulations, 2010.

RESPONDENT –

(16) On the other hand, the Respondent HPSEBL in its Reply has submitted that the monetary demand raised vide Demand Notice has rightly been done which is in accordance with the Code 3.10 of Himachal Pradesh Electricity Supply Code (Second Amendment) Regulations, 2018 notified on 31.07.2018 which came into effect from 01.04.2019. In the Regulations word “financial year” is used

by the Hon'ble Commission and it is without any dispute that financial year is from 01st April to 31st March in a year;

(17) That alleged refund for the year 2012 to 2014 is directly hit by Regulation 19(c) of HPERC (Consumer Grievances Redressal Forum and Ombudsman) Regulations, 2013 and is liable to be rejected;

(18) That 2nd Amendment to Supply Code was done by the Hon'ble HPERC was done after previous publication, calling objections from stake holders and after public hearing. The Amendment was duly published in the official gazette of Himachal Pradesh and thus Complainant cannot be allowed to claim ignorance;

(19) That the impugned action of the Respondent is valid and legal, in terms of mandated provisions of the Supply Code and therefore the complaint being devoid of merits is liable to be dismissed.

<u>ORDER</u>

(20) This Forum has 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 and the HP Electricity Supply Code, 2009 (or the Supply Code, 2009 or the Supply Code or the Code) including amendments thereto, record and facts along-with pleadings of the parties. We have heard the parties at length. The considered opinion of the Forum has been gathered after examining and analyzing fair facts, evidences and correspondence placed on record and arguments adduced by both the parties;

(21) At the outset, this Forum finds that the Complainant has raised multiple grievances by way of the instant complaint—

(a) One grievance of Complainant is with regard to refund of overcharged amount of Rs 11,25,000/= from November 2012 to August 2014 (Annexure C2) due to wrong consideration of Contract Demand (in kVA or MVA) and for compensation in lieu thereof, in accordance with section 43(3) read with HPERC (Standards of Performance) Regulations, 2010;

(b) The second grievance of Complainant is against wrongful consideration of original permanent Contract Demand of 750 kVA by the Respondent at the time of applying the code 3.10 of the Supply Code (Second Amendment) Regulations, 2018, notified on 31.07.2018 (effective 01.04.2019), for the purpose of raising the impugned monetary demand vide Demand Notice dated 16.11.2022 (Annexure C3), especially when the Complainant had reduced the Contract Demand to 500 kVA on 12.10.2012;

(c) The third grievance of Complainant is mainly in terms of non-applicability of ibid code 3.10 of the Supply Code to it.

(22) The Forum now takes up the first grievance of Complainant with regard to refund of overcharged amount of Rs 11,25,000/= --

(23) On the ibid grievance, the Respondent has raised objection on grounds that such is hit by regulation 19(c) of HPERC (Consumer Grievances Redressal Forum and Ombudsman) Regulations, 2013. On the other hand, in its Rejoinder, the Complainant has defended the grievance against ibid regulation 19(c);

(24) Forum observes that in respect of the ibid grievance for refund of overcharged amount of Rs 11,25,000/=, the cause of action to the Complainant first arose in November 2012 and thereafter

continued up to August 2014 when electricity bills were being raised to the Complainant by the Respondent;

(25) On examination of the ibid regulation 19(c), the Forum finds that the aforementioned grievance for refund of overcharged amount of Rs 11,25,000/= from November 2012 to August 2014 (Annexure C2) and for compensation in lieu thereof, has been submitted by the Complainant after as many as 10 years when the cause of action first arose to the Complainant. The Forum also does not find any merit what-so-ever in the arguments given by the Complainant in its Rejoinder, that because impugned Demand Notice has been issued on basis of Contract Demand of 750 kVA, thus the Complaint is not hit by limitation;

(26) The Forum holds without any iota of doubt that the ibid grievance raised by the Complainant for refund of overcharged amount of Rs 11,25,000/= from November 2012 to August 2014 (Annexure C2) is clearly hit by limitation period of two years in terms of ibid regulation 19(c) of HPERC (Consumer Grievances Redressal Forum and Ombudsman) Regulations, 2013 and therefore the grievance is not maintainable. The first grievance raised by the Complainant is decided accordingly.

(27) The Forum now takes up the second grievance of Complainant on the wrongful consideration of original permanent Contract Demand of 750 kVA --

(28) Forum observes that in order to decide the grievance, it is imperative to decide as to what is the Permanent Contract Demand of the Complainant as on 01.04.2019, the date from which Supply Code 2nd amendment notified on 31.07.2018, became effective;

(29) On examination of the HP Supply Code, 2009, the Forum finds that the concept of Temporary Contract Demand was first introduced

by way of first amendment to Supply Code vide HP Electricity Supply Code (First Amendment) Regulations, 2014, notified by the HP Electricity Regulatory Commission on 11.06.2014. Thus, it becomes evident that before the notification of this amendment, the Contract Demand and its revisions were all of Permanent nature;

(30) As observed from record, on 30.03.2010, the Original or Permanent sanctioned Contract Demand of the Complainant was 750 kVA, which was reduced by the Complainant to 500 kVA on 12.10.2012 (Annexure C1 Colly). After examination of record and the foregoing exposition of provisions of Regulations / Code, the Forum holds that the revised Contract Demand of 500 kVA done by Complainant on 12.10.2012 is of permanent nature or Permanent Contract Demand and the Contract Demand of 450 kVA effected in September 2014 is of temporary nature or Temporary Contract Demand. Thus, the Forum is in agreement with the Complainant that the Permanent Contract Demand of the Complainant on 01.04.2019 is 500 kVA and not 750 kVA and therefore the Demand of the Complainant has to be worked out on the basis of 500kVA;

(31) Now the Forum proceeds to delve on the third grievance of Complainant which is mainly in terms of non-applicability of ibid code 3.10 of the Supply Code to it —

(32) The Forum finds that the Complainant has raised the instant complaint by simply reproducing certain provisions of the Himachal Pradesh Electricity Supply Code (Second Amendment) Regulations, 2018 notified on 31.07.2018 which came into effect from 01.04.2019 and by irrationally arguing on untenable propositions that because he had sought Temporary reduction of Contract Demand (in kVA or MVA) in the year 2014 therefore, the

ibid Supply Code 2nd Amendment is not applicable to it but is applicable only to any future Temporary Contract Demand (in kVA or MVA). The Complainant has further argued that ibid Supply Code 2nd Amendment no-where states that the consumers who were being billed on the basis of Temporary Contract Demand, prior to the notification of the ibid 2nd Amendment, shall fall into the purview of the new mechanism. Forum also finds that a self-contradictory argument has further been placed forth by the Complainant that a six months period is allowed by the Supply Code Amendment Regulations, 2018 notified on 31.07.2018 and thus Demand has to be calculated keeping this in mind;

(33) This Forum observes that the Complainant has failed to set-up the legal basis of his arguments in the complaint. The Complainant has misconceived and mis-appreciated the fact that the ibid Supply Code 2nd Amendment notified on 31.07.2018 is not applicable to him as he had revised / applied for Temporary Contract Demand (in kVA or MVA) before the enactment of ibid Supply Code 2nd Amendment, 2018.

(34) This Forum, before proceeding with the third grievance of the Complainant, considers it necessary and expedient to refer to certain relevant amendments to the HP Electricity Supply Code, 2009 enacted by the HP Electricity Regulatory Commission (or the HPERC). The Supply Code, 2009 was notified by the HPERC on 26th May, 2009. Later Amendments were carried out from time to time. We mainly refer to amendments pertinent in the instant matter with regard to 'Temporary' revision of Contract Demand. The said amendments were first introduced by the HP Electricity Regulatory Commission (or the HPERC) vide Himachal Pradesh Electricity Supply Code (First Amendment) Regulations, 2014

notified on 11th June, 2014. In this amendment Code 3.10 was first inserted. Thereafter, amendment to this Code 3.10 was carried out by the HPERC vide the Himachal Pradesh Electricity Supply Code (Second Amendment) Regulations, 2018 notified on 31.07.2018. For the sake of clarity, relevant extracts of these amendments are reproduced here-in-under:-

(A) Himachal Pradesh Electricity Supply Code (First Amendment) Regulations, 2014 dated 11.06.2014 -

<u>Quote</u>

10. Insertion of para 3.10.- *In the said Code, the following para 3.10 shall be inserted; namely:-*
"3.10 Temporary revision of contract demand.–
The consumers to whom two part tariff is applicable shall be entitled to revise their contract demand within the total sanctioned contract demand without surrendering their lien of the total sanctioned contract demand, subject to the following condition- 10
(a) that the consumer shall not reduce the contract demand to lesser than 50% of the total sanctioned contract demand subject to a further condition that the contract demand shall not be reduced below the lowest limit of contract demand as per the tariff category (or any sub-category thereof) applicable to him;
(b) that the consumer shall not be entitled to revise the contract demand more than twice a year subject to the condition that the time gap between two successive revisions shall not be less than 3 months;
(c) that the consumer shall give a notice of at least one month to the licensee before revising the contract demand under this mechanism. Even though the consumer shall not be required to obtain any sanction from the licensee for change in contract demand under this mechanism, he, so as to avoid the disputes, shall ensure that the notice(s) for such revision are duly served by him upon the licensee through registered post or through courier service or is delivered by hand against signed receipt therefor;
(d) that in cases where the contract demand is reduced under this mechanism, such reduced contract demand shall be applicable for billing purposes; and
(e) that in cases where the consumer gets his contract demand reduced permanently, the limit under clause (a) shall be considered with respect to such reduced contract demand, but such reduction shall not be considered to have been made under this mechanism and the time gap of 3 months as per clause (b) shall be reckoned from the date from which the demand was last revised under this mechanism.

Illustration.- *If a consumer who is having sanctioned contract demand of 10 MVA temporarily revises the contract demand to 6 MVA w.e.f. 01.08.2014 under this mechanism but gets his sanctioned contract demand permanently reduced to 8 MVA w.e.f. 01.09.2014, he shall have to pay charges based on 6 MVA contract demand till 31.10.2014 (i.e. till the expiry of 3 months period from the date at which the contract demand was last revised i.e. from 01.08.2014). However, if the contract demand is to be reduced permanently to lesser than 6 MVA (say 4 MVA as on 01.09.2014), the demand charges would have been based on a contract demand of 4 MVA during the period upto 31.10.2014."*

Un-Quote

(B) Himachal Pradesh Electricity Supply Code (Second Amendment) Regulations, 2018dated 31.07.2018-

Quote

3. Amendment of para 3.10*:- For the sign ";" occurring after clause (a) of para 3.10 of the said Code, the sign ":" shall be substituted and thereafter the following provisos shall be inserted, namely:-*
"Provided that the consumer shall not be eligible for temporary revision of contract demand to a value other than the full sanctioned contract demand for a total period of more than six months in one financial year:
Provided further that in cases involving part period of a year e.g. if a consumer takes the connection, or the consumer gets his permanent sanctioned contract demand revised, during the middle of a year, the adjustments shall be made on pro-rata basis.
Note: *The Distribution Licensee shall, immediately after the publication of the Himachal Pradesh Electricity Supply Code (Second Amendment) Regulations, 2018, in the Rajpatra, Himachal Pradesh, issue suitable detailed procedural instructions within the framework of the above provisions to its field units for the smooth implementation of aforesaid provisions w.e.f 01.04.2019."*

Un-Quote

(35) Before proceeding to determine the question of applicability or non-applicability of Supply Code 2nd Amendment, this Forum also considers it pertinent to briefly delve into the working of the Contract Demand (in KVA/ or MVA). It is apparent that the Contract Demand is a provision of the Electricity Supply Code and the Tariff Orders. It is a Demand (in KVA/ or MVA) contracted by

the consumer at the time of his original application for connection, which is also subjected to permissible revisions during the life of the connection strictly in accordance with the provisions of the Supply Code, 2009. This Contract Demand is applied for, by the consumer and sanctioned by the licensee, inter-alia with the underlying purposes of determining the Standard Supply Voltages at the time of connection, for billing of the consumer etc. The original Contract Demand is of ‘Permanent’ nature and the subsequent revisions at the option of the consumer may be of ‘Permanent’ or of ‘Temporary’ nature which are regulated in accordance with the provisions of the Supply Code and further applied to billing etc in accordance with the provisions of various Regulations / Codes enacted by the HPERC. This Contract Demand (in KVA or MVA) serves as a reference vis-à-vis the actual maximum Demand (in KVA or MVA) recorded on the meter during the times of electricity consumption and is applied towards the billing of the consumer or other matters, as may be prescribed by way of HPERC Regulations / Supply Code. When the Supply Code regulates the revision of Contract Demand (in kVA or MVA), the concerned consumer is expected to keep a strict vigil on his electricity consumption patterns by managing the peaks of his maximum Demands (in KVA or MVA), simultaneously also keeping a vigil and managing / revising his Contract Demand (in kVA or MVA) from time-to-time so as to keep both in synchronization and consequently the optimization of its electricity bills;

(36) The Supply Code 1st Amendment dated 11.06.2014 stipulated various conditions for Temporary revision of Contract Demand (in KVA or MVA) and these were first introduced here by insertion of

Code '3.10 Temporary revision of contract demand'. This Code was later amended vide Supply Code amendment dated 31.07.2018, when certain Provisos were added to it. This 1st amendment, 2014 provided for limits of revision, number of revisions in a year, gap between successive revisions etc. The subsequent amendment of Supply Code (ie Supply Code 2nd Amendment) notified on 31.07.2018 introduced certain 'Provisos' to Code 3.10. The Provisos specifically provided for total period of 6 months of Temporary contract demand (in KVA or MVA) in a 'Financial Year'. This 2nd amendment came into force from 01.04.2019. It is pertinent to mention here that with regard to ibid 'Temporary revision of contract demand', the key word in the said proviso / amendment is the 'financial year'. It is undisputed that the financial year starts from 01st of April and ends on 31st of March. Accordingly, it becomes clear from the said amendments that on 31st March of each financial year, the 'Temporary Contract Demand', as existing previously shall expire. From the 1st of April of the subsequent financial year, the Contract Demand would get reset to the Permanent Contract Demand (in KVA or MVA) unless the Temporary Contract Demand is re-applied by the consumer. Therefore, in our considered view, a consumer would be required to apply afresh for re-revision of his Temporary Contract Demand (in KVA or MVA) in any new financial year, else a previously existing Temporary Contract Demand (sanctioned or deemed sanctioned) shall automatically get reset to the last sanctioned Permanent Contract Demand (in KVA or MVA) which was also initially / previously applied for by the consumer and sanctioned by the distribution licensee;

(37) From the foregoing implications of express provisions of 'Code 3.10 Temporary revision of contract demand' (or Temporary Contract Demand) (in KVA or MVA) as prescribed in the Supply Code 2nd Amendment, 2018, this Forum holds that after 01.04.2019, i.e when the financial year starts, any monetary demand (in Rs) raised by the Respondent HPSEBL based on a Temporary Contract Demand (in KVA or MVA) existing prior to 01.04.2019, can only be with regard to electricity consumption done prior to 01.04.2019. For electricity consumption occurring after 01.04.2019, such monetary demand (in Rs) shall necessarily have to be based on Temporary Contract Demand (in KVA or MVA), if such is reapplied by the consumer. In absence of such re-application, this monetary demand automatically gets based upon Permanent sanctioned Contract Demand which was last applied. This process shall follow for each / new financial year;

(38) In view of above amended provisions and observations, this Forum arrives on the logical conclusion that question of retrospective application of Supply Code 2nd Amendment by the Respondent HPSEBL shall arise only, if a monetary demand is raised by the Respondent HPSEBL after 01.04.2019 for any electricity consumption period/ electricity billing prior to 01.04.2019. Thus, no question of such retrospective application or effect of ibid Supply Code 2nd amendment, 2018 arises, if a monetary demand is raised by the Respondent HPSEBL after 01.04.2019 for any electricity consumption period after 01.04.2019. This monetary demand is based on the condition of 'financial year' as applied to Temporary Contract Demand (in kVA or MVA) contained in the amended provisions of Code 3.10 of the Supply Code, 2009 2nd Amendment, 2018 ibid;

(39) This Forum in the facts and circumstances of the case, safely sums up that any Temporary Revision of Contract Demand (in kVA or MVA) that may have existed in the past before 01.04.2019 shall cease to remain effective beyond 01.04.2019. Therefore, the consumer shall have to apply afresh for a 'Temporary Contract Demand' beyond 01.04.2019, if he so requires and in absence of such revision or re-application, the only Contract Demand that automatically survives in accordance with the Supply Code 2nd Amendment is the 'Permanent Contract Demand' (in kVA or MVA) on the basis of which further billing can be done or any monetary demand can be raised by the distribution licensee. When concerned consumer does not apply afresh or does not revise his Contract Demand after 01.04.2019, then any Temporary revision of Contract Demand or 'Temporary Contract Demand' (in KVA or MVA) sought before 01.04.2019, such shall deem to get reset to the sanctioned 'Permanent Contract Demand' (in KVA or MVA) from this date onwards, till such time a fresh application for Temporary revision of contract demand or 'Temporary Contract Demand' (in KVA or MVA) is received from consumer and/or sanctioned by the Respondent. This process shall follow for each financial year beyond 01.04.2019 and accordingly all matters of electricity billing shall be dealt vis-à-vis this 'Permanent Contract Demand' (in KVA or MVA) under such a condition.;

(40) Now coming to the instant complaint, it is observed by this Forum that the Complainant had temporarily revised his Contract Demand to 450 kVA (Temporary Contract Demand) in the year 2014 and thereafter, it had not revised or applied afresh for this 'Temporary Contract Demand' (in KVA or MVA) even after the enforcement of the Supply Code 2nd Amendment notified on 31.07.2018.

Consequently, the Respondent HPSEBL raised the impugned monetary demand to the Complainant vide Demand Notice (Annexure C-3) on account of Supply Code 2nd Amendment, 2018, only for the periods (May 2019 to October 2022) of electricity consumption occurring after 01.04.2019 based on the Permanent Contract Demand. This fact has not been denied by the Complainant. Therefore, the plea of the Complainant to this effect that the application of the amended provisions of the Supply Code, 2009, vide Supply Code 2nd Amendment, 2018, are not applicable to it, is wrong, far-fetched and not tenable in face of express provisions of the Supply Code 2nd Amendment ibid. The Forum also does not find any retrospective application of the Supply Code / Regulations. Thus, the contention of the Complainant that the Supply Code 2nd Amendment is not applicable to him is out-rightly rejected by the Forum as being grossly misplaced and wrong;

(41) In accordance with the Supply Code 2nd Amendment, the end of the financial year is signified by the date of 31st March of the year and this is not denied by the Complainant. On this end date the 'Temporary Contract Demand' as existing, shall deem to expire or cease to exist. Thus, from the start of the next financial year as being 01st April, which is also not denied by the Complainant, the Complainant shall be expected to apply afresh for the Temporary Contract Demand (in KVA or MVA), if it so intends. In the instant complaint, the Complainant had failed to apply afresh for the 'Temporary Contract Demand' from 01.04.2019 onwards and thus was liable to be billed on the basis of Permanent Contract Demand from 01.04.2019 onwards;

(42) Therefore, it can be safely concluded that the Supply Code 2nd Amendment, 2018 by the Respondent HPSEBL is beyond doubt applicable to the Complainant and it is its own fault of not re-applying for a fresh ‘Temporary Contract Demand beyond 01.04.2019 or after the start of the financial year. Because the Complainant failed to re-apply afresh for Temporary Contract Demand beyond 01.04.2019 or after the start of the financial year thus, any benefit of six months as is being argued by the Complainant, cannot and shall also not become available to the Complainant;

(43) The Complainant has further contested that the ibid Supply Code 2nd Amendment was not implemented as per Note in the Amendment. The Forum rejects this contention of the Complainant for the sole reason that such Note is in terms of instructions to field units by the Respondent and not to the consumer Complainant;

(44) The Forum also finds the arguments of Complainant as untenable, that the Respondent should have issued Notices to the consumers for the revision of Contract Demand. It is a settled proposition that ignorance of law is no excuse. The fact is undisputed that change of law through amendments is done after following due process. The present 2nd Amendment, 2018 to Supply Code has been effected by the HPERC after inviting public/ objections etc from all stake holders. The said amendments after enactment were notified and published in official gazette for the knowledge of public/stake holders at large. It is safely presumed and expected that all stake holders / public including the Complainant are well aware of the said amendment. Thus, there is no requirement of any prior notice to raise monetary demand (in Rs) as per amended

provisions of the Code and the contention of the Complainant to this effect is patently wrong, misplaced and is accordingly rejected. Monetary demands based upon Statutes, Regulations/ Codes notified by the HPERC and on Tariff Orders passed by the Ld HPERC, cannot be held to be illegal. Thus pleas of the Complainant are naive, flimsy and devoid of any substance and not tenable in facts and circumstances narrated above;

(45) The present complaint under adjudication, relates mainly to the undeniable fact and circumstances, where the Complainant has failed to adhere to the amended provisions of Supply Code, 2018 by not keeping vigil on the change in law. As already discussed in paras supra that change in statute through a due process of law, especially when the amendments are made public, does not require its intimation to the consumer or the Complainant separately neither is it imperative upon the Respondent HPSEBL to inform its consumers individually. We further observe that there is no statutory requirement under the Supply Code with regard to prior intimation by the HPSEBL to the consumers of amendments made in law. The Forum is of considered view that it is incumbent upon the consumer /Complainant to exercise due diligence to keep strict vigil especially in respect of change in law being affected by the HPERC through an open transparent due process. Thus Complainant ought to have appropriately revised its 'Contract Demand' in pursuance to the Supply Code 2nd Amendment, 2018. The 'Note' at the end of Code 3.10 of the Supply Code 2nd Amendment, 2018 is merely in terms of issuing of detailed procedural instructions by the 'Distribution Licensee' i.e the HPSEBL to its field units and not to the consumers at large. It is also otherwise impractical and illogical to assume intimation to

each and every consumer of amendments which are notified in Official Gazette and uploaded on the website of HPERC for knowledge of consumers at large;

(46) It is evident from the observations made here-in-above, that the instant grievance pertains to non-application /non-revision of Contract Demand (in kVA or MVA) on Temporary basis i.e Temporary Reduction of Contract Demand after 01.04.2019 by the Complainant. This resulted in Permanent Contract Demand (in kVA or MVA) automatically becoming the basis for raising of impugned monetary demand by the Respondent HPSEBL;

(47) This Forum does not find force in the arguments of the Complainant that amended provisions of Code 3.10 of Supply Code 2nd Amendment, 2018 are not applicable to him. From the observations made above, it is established and safely held that that the ibid 2nd Amendment, 2018 is effectively applicable to the consumers / Complainant, with effect from 01.04.2019;

(48) The Forum from examination of record, further finds that the monetary demand was raised by the Respondent only for the period of electricity consumption from May 2019 to October 2022 and not for any period before 01.04.2019. Further, when the impugned Demand Notice dated 16.11.2022 (Annexure C-3), is examined, it becomes evident that the Respondent HPSEBL has applied the provisions of ibid Code 3.10 of second (2nd) amendment notified on 31.07.2018 (effective 01.04.2019) only for the period from May 2019 to October 2022 (42 months) and not for any period prior to 01.04.2019. Accordingly, it becomes amply evident that there is no retrospective application of Regulations / Code. Thus, on this score alone the complaint deserves to be dismissed, being argumentative

and without any legal basis, as it cannot be held that there is any retrospective application, what-so-ever, of ibid 2nd Amendment;

(49) However, on examination of ibid impugned Demand Notice dated 16.11.2022, the Forum finds that the basis of the monetary demand raised by the Respondent is the original Permanent Contract Demand of 750 kVA and not the revised Contract Demand of 500 kVA. As has been observed by the Forum in Paras supra, the Contract Demand of 500 kVA revised by the Complainant on 12.10.2012 is of Permanent nature and it is this Contract Demand of 500 kVA which has to be the basis for raising the monetary demand in terms of code 3.10 of the Supply Code (Second Amendment) Regulations, 2018. Thus, on this count alone, the Forum agrees with the Complainant that the impugned Demand Notice dated 16.11.2022 is wrong because it is based upon the Contract Demand of 750 kVA, whereas it should have been based upon the Contract Demand of 500 kVA;

(50) In view of the foregoing discussions, the Forum does not find any illegality in the Demand Notice dated 16.11.2022 (Annexure C-3) raised by the Respondent HPSEBL which this Forum finds as having been issued in terms of the amended provisions of the Supply Code, 2009 i.e Code 3.10 notified on 01.07.2018 and effective from 01.04.2019. The Forum further holds that no benefit of six (6) months as provided in Code 3.10 of the Supply Code Amendment Regulations, is available to the Complainant till the time the Complainant applied afresh for the Temporary Contract Demand, as this provision of regulations is pivoted upon the Temporary Contract Demand which in this case was not re-applied timely by the Complainant;

(51) However, the Forum does find the ibid impugned monetary demand (Annexure C3) to have been wrongly raised by the Respondent based on the Contract Demand of 750 kVA. The Forum holds that the monetary Demand has to be raised by the Respondent against Contracted Demand of 500 kVA instead of 750 kVA. To this extent the Demand Notice (Annexure C-3) is set aside with directions to the Respondent to correct and raise revised Demand Notice based upon 500 kVA Contract Demand. The Respondent is directed to raise revised Demand Notice to the Complainant within 10 days of this Order, which the Complainant shall pay within 15 days of the said revised Demand Notice. The second and the third grievances raised by the Complainant are collectively decided accordingly.

In aforesaid terms, the complaint is decided on merits and is partially allowed and is disposed of accordingly.

Parties are left to bear their own costs.

Order is announced before the parties present today on 24.05.2023 at Shimla in open Forum.

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: 24.05.2023
Shimla:

Sd/-	Sd/-
Vikas Gupta	**Tushar Gupta**
(Member)	**(Chairperson)**

CONSUMERS GRIEVANCES REDRESSAL FORUM AT KASUMPTI, SHIMLA-9.

Complaint No.: - 1421/4/22/37
Date of Admission: - 30.12.2023
Quorum: - Er. Tushar Gupta, Chairman
Er. Vikas Gupta, Member

In ref:-

M/s Swastik Industries,
Plot No. 41-42, Sec-1
Parwanoo Distt. 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, Distt. Solan (HP).

3. The Assistant Executive Engineer,
   Electrical Sub-Division HPSEBL,
   Parwanoo , Distt. Solan (HP).

Respondents

Final hearing:-24.05.2023.

Counsels:-

Complainant 1. Sh. Rakesh Bansal (Authorized Representative)

Respondent 1. Sh. Anil Kumar God, Advocate

Date of Decision: -24.05.2023

Notice

Registered

CONSUMERS GRIEVANCES REDRESSAL FORUM AT KASUMPTI SHIMLA-171009.

No.CGRF/Complaint No. 1421/4/22/37 **Dated:-**

M/s Swastik Industries,
Plot No. 41-42, Sec-1
Parwanoo Distt. Solan (HP).

Complainant

V/s.

HPSEBL & Others.

Respondents

Complaint No. 1421/4/22/37

1. The Executive Director (Pers.),
HPSEBL,Vidyut Bhawan,
Shimla-171004.

2. The Sr. Executive Engineer,
Electrical Division,
HPSEBL, Parwanoo, Distt. Solan (HP).

3. The Assistant Executive Engineer,
Electrical Sub-Division HPSEBL,
Parwanoo , Distt. Solan (HP). **Respondents**

The Certified copy of final order dated 24.05.2023 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-9.