

CONSUMERS GRIEVANCES REDRESSAL FORUM AT KASUMPTI, SHIMLA-9
No. CGRF/Complaint No. 1515/2/20/009

Complaint No.: - 1515/2/20/009
Date of Admission: - 29.06.2020
Quorum: - Er. Vikas Gupta, Member.
Sh. K.S Dhaulta, Member.

M/s SMSN Continental (P) Ltd.
Vill.& P.O- KalaAmb, Mauza Kheri,
Tehsil-Nahan, District Sirmour (HP).
Through Vineet Bansal, Director.

Complainant

V/s.

HPSEBL & Others.

Respondents

1. Assistant Executive Engineer,
Electrical Sub-Division HPSEBL,
KalaAmb Distt. Sirmour (HP).
2. The Sr. Executive Engineer,
Electrical Division, HPSEBL,
Nahan, Distt. Sirmour (HP).
3. HPSEBL, Kumar House, Vidyut Bhawan,
Shimla-171004 Through its Executive Director,

Respondents

Final hearing:-

19.4.2021

Present for:-

Complainant

1. Sh. Rakesh Bansal, (Authorized Representative)

Respondents

1. Sh. Anil Kumar God, Advocate
2. Sh. Kamlesh Saklani Law Officier HPSEBL
3. Er. Narinder Kumar A.E Kala Amb

Date of Decision: -

19.4.2021

ORDER

1. The instant complaint has been filed to quash & set-aside the recovery and refund thereof the amount of Rs.39,05,735/- charged from the complainant by HPSEBL/respondents as recovery of outstanding dues of previous occupier i.e., Vardhman Roofing Pvt. Ltd. The dues were alleged to have been deposited by the complainant under duress. The complainant alleges that the respondents have contravened the provision of the Supply Code, 2009, which clearly bars from recovering the dues of previous occupier from the next occupier. Complainant alleges that these outstanding arrears of previous occupier/consumer in the name of M/S Vardhman Roofing Pvt. Limited were to be recovered from said consumer through various legal options available to the respondents under law. The complainant on 23.10.2018 had purchased the industrial unit in Kala Amb area, under SARFAESI Act from the owner of Plot i.e., Vardhman Roofing Pvt. Ltd as per Annexure: C1. The complainant thereafter, applied for a connection for supply of electricity to the respondents and sanction was accorded for 900KW with 900KvA of contract demand vide sanction letter dated 3/7/2019 (Annexure: C2) after completing all codal formalities. The power connection was finally made operational in the month of July, 2019 to enable the complainant to start the manufacturing activities.
2. The complainant further submitted that before processing the connection and transfer of the land in the name of the complainant company, respondents found from the revenue record that a sum of Rs. 39,05,735/- was outstanding in the name of previous owner. Under duress, the complainant had to deposit the said amount with HPSEBL for getting the charge cleared in the revenue records therefore, transferred the said sum to respondents on 1.11.2018. The District Collector transferred the land & building in the name of the Complainant.
3. The Complainant averred that due to sheer negligence of the field staff of the respondents the supply to the previous occupier was not disconnected well in time. The dues of previous occupier after adjustment of security deposits were recovered from complainant by creating pressure not to give fresh connection unless these dues were cleared. The complainant also refers to the decision of the Forum in similar cases, whereby the relief to the complainant has been provided. The complainant alleges that his application dated 25.4.2019 should have been processed for fresh connection, irrespective of the history of the said plot. Only such liabilities should have been demanded from the complainant those are applicable to new connection.
4. The complainant contends that he is aggrieved by the above stated wrong actions of the Respondents & forcing him to pay sundry/arrears of the previous consumer in a illegal and arbitrary manner and without any basis. Complainant also refers to provisions of Supply Code, 2009 & the HPERC (CGRF & Ombudsman), Regulations, 2013 to claim interest for the period the amount refundable to the consumer is held by the Licensee.
5. The Respondents filed their reply contesting the claim of the complainant. The Respondents raised the preliminary objection of maintainability of the present complaint in view of the fact that it is barred by the principle of constructive res-judicata. It is forcefully argued that the complainant has filed a Complaint No. 1515/2/19/019 titled as SMSN vs HPSEBL on the same

grounds before this Forum as is evident from the Annexure: R-1. It is submitted that the complainant had raised the dispute of levying of late payment surcharge on the principal outstanding amount to the tune of Rs. 79,88,902/- and had not challenged the amount of Rs. 39,05,735/-, which had been decided in favour of the respondents vide order annexed at Annexure:R-2 with the reply.

6. The respondents further argued that, if the present complaint is allowed in that eventuality the order passed by this Forum in a Complaint No. 1515/2/19/019 titled as SMSN vs HPSEBL on the same grounds, will become otiose which will directly affect the jurisdiction & competence of this Forum, as in the present case the complainant has challenged the initial demand raised by the respondents to the tune of Rs.39,05,735/- on account of default committed by the previous owner/occupier of the premises in question, whereas, it should have been challenged in its previous complaint filed before this Forum.
7. It is also admitted fact that the complainant had applied for the restoration of the electric power supply to the premises in question and not for issuance of new connection on the same contract demand and connected load, as is evident from the pleadings of the complainant in previous complaint. Thus, complainant in view of the rules and regulations in force was under obligation to clear all the outstanding dues of the previous owner of the premises. As such the complaint is not maintainable.
8. The parties today argued the matter and prayed to dispose of the complaint accordingly. We have heard both the Parties and examined the previous complaint filed by complainant annexed with reply by the respondents as **Annexure:R-1**, relevant record, Regulations and orders of this Forum etc., placed on record by the parties during course of hearing. The facts on record and pleadings of the parties clearly establish that the complainant has filed a Complaint No. 1515/2/19/019 titled as SMSN vs HPSEBL on the same grounds before this Forum. The Forum has decided the complaint vide its order dated 19.2.2020 placed on record as **Annexure: R-2** in favour of the respondent board.
9. The **Annexure:R1** on record establish that complainant in its previous complaint has raised the issue of the deposit of the amount of Rs. 39, 05,735/- well knowing the fact that it was outstanding dues of previous occupier, as is evident from paras 3 of the Complaint No. 1515/2/19/019 titled as SMSN vs HPSEBL. It is evident from the contents of the para 3 that the said amount was deposited by the complainant without any duress and on his own volition, thus contradicting the claim made in the present complaint. It was not even mentioned in the said complaint that the deposit of Rs. 39, 05,735/- was contrary to the provision of the Supply Code, 2009 and settled position of law on the matter, as claimed now by the complainant in present complaint. Thus, complainant by his own conduct and acquiescence is stopped to raise this issue again in the present complaint.
10. We find force in the argument of the respondents that the complainant had raised the dispute of levying of late payment surcharge on the principal outstanding amount to the tune of Rs. 79,88,902/- and had not challenged the amount of Rs. 39,05,735/-, which had been decided in favour of the respondents vide order annexed at **Annexure:R-2**. We fail to understand as to what

prevented complainant to assail the amount of initial demand raised by the respondents to the tune of Rs.39, 05,735/- on account of default committed by the previous owner/occupier of the premises in question. There is no plausible explanation provided by the complainant to justify filing again the complaint on similar issue which stood decided by this Forum vide order **R-2**.

11. In the facts & circumstances of the case & in our considered opinion, if the present complaint is allowed, in that eventuality the order passed by this Forum in a Complaint No. 1515/2/19/019 titled as SMSN vs HPSEBL on the same grounds, will become otiose. This will directly affect the jurisdiction & competence of this Forum to reopen a decided matter. In the present case the complainant has challenged the initial demand raised by the respondents to the tune of Rs.39, 05,735/- on account of default committed by the previous owner/occupier of the premises in question, whereas it also stood already mentioned in the previous complaint filed before this Forum and decided on 19.2.2020.
12. The pleadings of the parties also make it evident that the complainant as per **Annexure R-3** has already approached the Hon'ble Ombudsman by way of representation under regulations 28(1) & (2) and 33 of the HPERC Regulations, 2013 on the matter, assailing the order of this Forum dated 19.2.2020 & demand notice dated 3.7.2019. This material aspect of the complaint has not been disclosed by the complainant in its complaint for reasons best known to him. The same is presently stated to be sub-judice before the LD. Ombudsman and this material fact has been concealed by the complainant from this Forum.
13. We are constrained to observe that the complainant has not come to this Forum with clean hands, as material facts which have been brought on record by the respondents referred in the para supra, were not disclosed in the present complaint. These facts otherwise, were material & vital for the disposal of the complaint.
14. We are convinced that the present complaint is nothing but a vain attempt to institute a claim on the same or similar issue, which stood decided by this Forum vide order dated 19.2.2020 and the said order is presently under challenge before the Ld. Ombudsman as per **Annexure R-3**. We are not convinced with the arguments of the complainant in rebuttal that the present matter & the proceedings before the Ombudsman are different and there is no contradiction between the two.
15. It is evident from the prayer clause of the previous complaint **Annexure R-1** that complainant has sought restoration of the electricity supply to the premises in question and now in present complaint he is asking for treating its application, as a new connection which is not only contradictory but also not justified from facts on record. Moreover, the prayer of the complainant made in his previous complaint, stood decided vide order of this Forum referred above which is now sub-judice before Ld. Ombudsman.
16. We do not find any merit in the instant complaint which is otherwise hit by the principle of constructive res-judicata, as the issue of an outstanding amount of Rs.39,05,735/- was directly and substantially in issue in the previously instituted complaint **Annexure: R-1**, which stood decided by this Forum as discussed in para supra. It is settled law that similar matter or issue cannot be raised at two forums simultaneously, as is the case with present complaint.

17. In view of the observations & discussions made here-in-above, the present complaint is disallowed, as the facts on record and pleadings of the parties clearly establish that the complainant had filed a Complaint No. 1515/2/19/019 titled as SMSN vs HPSEBL on the similar grounds before this Forum which stood decided vide order dated 19.2.2020 placed on record as **Annexure: R-2** in favour of the respondent board. If the present complaint is allowed in that eventuality the order passed by this Forum in a Complaint No. 1515/2/19/019 titled as SMSN vs. HPSEBL on the same grounds, will become otiose, which is neither proper nor within jurisdiction & competence of this Forum. The matter is also stated to be presently sub-judice before the Ld.Ombudsman in appeal as per Annexure: **R-3**. Thus, at this stage it will not be proper & legal for us to interfere on the matter which also involve directly and substantially the issues raised in the present complaint before this Forum. In the aforesaid terms the complaint stand disposed of.
18. The parties are left to bear their own costs. Announced before the parties present at Kasumpti, (Shimla) on 19.4.2021.
19. The Case 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:- 19.4.2021

Place:- Shimla

Sd/-

(K.S. Dhaulta)
Member

Sd/-

(Vikas Gupta)
Member

Notice

Registered

CONSUMERS GRIEVANCES REDRESSAL FORUM AT KASUMPTI SHIMLA-171009.

No.CGRF/Complaint No. 1515/2/20/009

Dated:-

M/s SMSN Continental (P) Ltd.
Vill.& P.O- KalaAmb, Mauza Kheri,
Tehsil-Nahan, District Sirmour (HP).
Through Vineet Bansal, Director

Complainant

V/s.

HPSEBL & Others.

Respondents

Complaint No. 1511/2/20/009

1. The Executive Director (Pers.),
HPSEBL, Vidyut Bhawan,
Shimla-171004.
2. The Executive Engineer,
Electrical Division, HPSEBL,
Nahan, Distt. Solan (HP).
3. The Assistant Engineer,
Electrical Sub-Division, HPSEBL,
Kala Amb, Distt. Solan (HP).

Respondents

The Certified copy of final order dated 19.04.2021 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.