

CONSUMERS GRIEVANCES REDRESSAL FORUM AT KASUMPTI, SHIMLA-9.

No. CGRF/Complaint No. 1521/3/20/034

Dated:-

Complaint No.: - 1521/3/20/034
Date of Admission: - 16.09.2020
Quorum: - Er. M.G Sharma, Chairman.
Er. Vikas Gupta, Member.

M/s Kwaliti Food Products, Indst. Area,
Gondpur, Tehsil Paonta Sahib,
District Sirmour (HP).

Complainant

V/s.

1. The Executive Director (Pers.),
HPSEBL, Vidyut Bhawan,
Shimla-171004.
2. The Superintending Engineer, HPSEBL,
(OP) Circle South East at Nahan,
District Sirmour (HP).
3. The Assistant Executive Engineer,
Electrical Sub-Division HPSEBL,
Paonta Sahib, Distt. Sirmour (HP).

Respondents

Final hearing:-

26.10.2021

Present for:-

Complainant

1. Sh. Vinod Kumar Chauhan, Advocate

Respondent

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

Date of Decision: -

15.11.2021

Order

1. The Complainant is consumer of electricity of HPSEBL having connected load 98.26 KW and Contract Demand 85 KVA. The complainant have been issued demand notice dated 25.06.2020 amounting to Rs. 85757/- only on account of recovery of wrong application of tariff as pointed out by the internal audit party w.e.f. 4/17 to 12/17 of ESD Paonta similarly, Respondent HPSEBL issued another notice dated 25.06.2020 on a/c of less charges of short assessment .
2. The complainant has aggrieved with the aforesaid notices issued by the Respondent and have stated that the Respondent has failed to adhere the provisions of section 56(2) of Electricity Act, 2003 and Para 5.6.2 of the supply code-2009 regulation, 2013 as amended up to date, specified by HPERC.
3. The complainant in their submission has mentioned that the aforesaid demand neither due nor outstanding from the complainant company under the prevailing laws. The Respondent also had to fail to implement the order of the Himachal Pradesh Electricity Regulatory Commission, 2014 where the Respondents had raised the demand beyond the period of limitation provided under limitation Act, 1963.
4. The complainant vide letter dated 08.07.2020 have asked Respondent to provide the details of the aforesaid recovery but the Respondent neither replied nor any communication had been forwarded by them, even thereafter applicant had reminded the Respondent by way of reminder on 04.08.2020 but the Respondents are adamant , to reply and they have raised a monthly consumption invoice no 1500246794 to the tune of Rs. 22,075/- on 17.07.2020 and in this invoice the Respondents have again

- included an arrear of Rs. 6120/- which is highly illegal, contrary to prevailing laws, direction and the Electricity Act.
5. The complainant in its request dated 23.07.2020 to provide detail of aforesaid invoice & also submitted legal notice dated 24.07.2020 with a request to stop and raising unnecessarily bills, arrears, recovery but no reply have been filed by the Respondent.
 6. As per Complainant Respondent had issued a disconnection notice to the applicant on 29.07.2020 and the aforesaid notice was with respect to the payment/demand raised /invoice by the Respondents to the tune of Rs. 22,075/-. It is pertinent to mention here that as per the invoice the amount which was due to pay was Rs. 22,075/- but when the applicant had approached the Respondents with respect to the detail of the aforesaid amount, the Respondents neither replied the same, rather they had time and again deferred the request of providing the details from one pretext to another. Ultimately applicant had addressed a letter to the Respondent No.3 whereby applicant had attached a cheque of Rs. 22,075/- on 07.08.2020 in favour of Respondents but the Respondents had not accepted the payment and very cleverly Respondents had revised the demand from Rs. 22,075/- to Rs. 1,27,589/- failing which the electricity connection of the applicant will be disconnected.
 7. The applicant had filed a civil suit for grant of permanent injunction before civil judge Sr. Division on 13.8.2020 due to apprehension that Respondents may disconnect the electricity connection but since the said suit was not maintainable before the Ld. Civil Court as such no interim order was passed by Ld. Court. The Civil Judge Ponta Sahib vide order dated 24.03.2021, the aforesaid case was dismissed as withdrawn on the

- request of Sh. Maya Ram (holding SPA), as the same has been filed before the CGRF on the same cause of action.
8. Complainant further submitted that the Respondent had disconnected the electricity connection of the applicant company in the early morning of 14.08.2020 which had caused reparable loss to the applicant company and under protest he had to deposit the entire demanded amount of Rs. 1,27,589/- which includes the arrears of recovery to the tune of Rs. 1,05,514/- further due to disconnection of electricity the functioning as well as production of the company had been disturbed by the Respondents and the electricity connection has been restored by the Respondent only on 15.08.2020 after one day.
 9. The Complainant has termed the disconnection of power supply as illegal as well as recovery so made by the Respondent of arrear amounting to Rs. 1,05,514/- and further requested for compensate on the loss suffered due to disconnection of electricity.
 10. Respondent HPSEBL in their submissions, relied on the observation made by internal audit party that medium Supply Consumers including the Complainant were undercharged because whole consumption charges have been charged from the consumer including the complainant on normal rate and peak hour charges have not been charged from them for the period 09/2015 to 03/2016 and that has resulted into the short assessment of during peak hour consumption charges and accordingly Respondents has calculated the amount of Rs. 19849/- on account of short assessment and had issued demand notice dated 25.06.2020 Annexure RA-1 placed on record. It is further submitted that similarly during the same audit it was also pointed out by the Internal Audit Party that the consumer including the Complainant has also been undercharged

due to wrong application of tariff as the complainant category is medium supply and whereas the complaint has been charged for SMS which has resulted into under charges due to wrong application of the tariff and accordingly Respondents have also calculated the amount of Rs. 85757/- on account of recovery of wrong application of the tariff from 01/2017 to 12/2017 and issued demand notice dated 25.06.2020 as is evident from the Annexure RA-2.

11. The audit party has pointed out LIPS tariff and the LVSS was charged @ 2% instead of 5% in the energy bill of the consumer as per provisions of tariff order Part -1 General Condition and the demand of Respondent is within time. The demand of Rs. 85,757/- & Rs. 19849/- pertaining to the period from 04/2017 to 12/2017 is first time demanded from the Complainant on 25.06.2020. The Respondents have served the demand notice as per rules and regulations for the time being in force and Complainant is liable to make the payment of the demand notice.
12. The Respondent has further submitted that the section 56(2) of the Electricity Act, 2003 has to be read with the section 170 of the Electricity Act, 2003 and the limitation starts only after the demand raised bill be issued to the consumer, therefore in present case limitation starts from the dates when the demand notice were served upon the Complainant.
13. The bill for July 2020 amounting to Rs. 22,075/- raised to the Complainant including arrears of Rs. 6120/- on account of demand charges for the period April 2020 to June 2020, which were to be recovered from the Complainant in equal installment as per office order dated 27.04.2020 issued by managing Director of Respondent vide which the demand charges are deferred the due date of payment of electricity bills are extended without levy of late payment of the surcharge a rebate

of 10% per bill given for digital payments by the domestic consumers and it was also directed to provide uninterrupted supply to the consumers till 31.05.2020.

14. The electricity of the Complainant was disconnected due to nonpayment of outstanding energy consumption charges as is provided under Electricity Act, 2003, HP Electricity Supply Code 2009 and the Electricity sales manual as amended because sufficient time has been given to the Complainant to deposit the amount and when the Complainant failed to deposit then same is added in its energy bills and the power supply was disconnected to the premise.
15. Hon'ble Apex Court, as well as various High Courts in catena of judgments, have taken the view that the electricity charges become due and limitation thereof commences only when the bill thereof has been raised. Liability to pay accrues when it is quantified and the bill is raised. It is further submitted here that the demand as is raised by Respondents is not hit by the provision of section 56(2) of the Electricity Act 2003 clause 5.6.2 of the HP Electricity Supply Code 2009 and by the provisions of the Limitation Act 1963 as the demand has for the first time been raised by the Respondents by way of demand notice dated 25.06.2020 and the period of limitation of two years will start to run from 25.06.2020 and not from the earlier date as such the demand of Respondents is well within time.
16. Section 56(2) of the Electricity Act 2003, is to mean consumption of electricity, it would mean that electricity charges would become due and payable the moment electricity is consumed and if charges in respect thereof are not paid then even without a bill being issued a notice of disconnection would be liable to be issued under section 56(2) of the

Electricity Act 2003. This certainly could not have been the intention of the legislature. The section 56(2) of the Electricity Act 2003, gives a right to the licensee to issue not less than 15 days notice if charges due to it are not paid. The word “due” in this context must mean due and payable after consumption of the electricity and without submission of the bill”. It is further submitted that the Hon’ble Apex Court has recently once again in civil Appeal No. 1672 of 2020 decided on February 18 of 2020 discussed the scope of section 56(2) of Electricity Act, in its judgment as Para no 9 which is reproduced as under:-

“9 Applying the aforesaid ratio to the facts of the present case, the licensee company raised an additional demand on 18.03.2014 for the period July 2009 to September 2011. The licensee company discovered the mistake of billing under the wrong Tariff Code on 18.03.2014. The limitation period of two years under section 56 (2) did not preclude the licensee company from raising an additional or supplementary demand after the expiry on the limitation period under Section 56 (2) in the case of a mistake or bona fide error. It did not, however, empower the licensee company to take recourse to the coercive measure of disconnection of electricity supply, for recovery of the additional demand. As per Section 17 (1)(c) of the Limitation Act, 1963, in case of a mistake, the limitation period begins to run from the date when the mistake is discovered for the first time.

17. Taking cognizance of the aforesaid judgments in the present case, the period of limitation would commence from the date of discovery of mistake and subsequent usual of demand notice dated 25.06.2020 and not prior thereto the action of the Respondent is in conformity with instruction No.38 of the sales manual Electricity Supply Code Regulation

2009 and CGRF of Ombudsman Regulation- 2013. Accordingly the demand notices issued by the Respondent HPSEBL of dated 25.06.2020 are correct and have been rightly charged.

18. In the aforesaid terms, the complaint is disposed of as devoid of merits. The judgment is reserved on dated 28.10.2020, released on dated 15.11.2021.

The file is consigned to the record room along with original copy of the order. The certified copy of order be kept in safe custody in the folder of orders. Certified copies of this order be supplied to both the parties.

Place: - Shimla

Dated: -15.11.2021

Sd/-

(Vikas Gupta)
(Member)

Sd/-

(M.G. Sharma)
Chairman

Notice

CONSUMERS GRIEVANCES REDRESSAL FORUM AT KASUMPTI SHIMLA-171009.

No. CGRF/Complaint No. 1521/3/20/034

Registered
Dated:-

M/s Kwaliti Food Products, Indst. Area,
Gondpur, Tehsil Paonta Sahib,
District Sirmour (HP).

V/s.

Complainant

HPSEBL & Others.

Respondents

Complaint No. 1521/3/20/034

1. The Executive Director (Pers.),
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Electrical Sub-Division HPSEBL,
Paonta Sahib, Distt. Sirmour (HP).

Respondents

The Certified copy of final order dated 15.11.2021 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.