CONSUMERS GRIEVANCES REDRESSAL FORUM AT KASUMPTI, SHIMLA-9.

Complaint No.: - 3131/2/23/14
Date of Admission: - 10.04.2023
Quorum: - Er. Tushar Gupta, Chairman
Er. Vikas Gupta, Member

In ref:-

Mr. Dinesh Butail,
S/o Late Sh. Kunj Bihari Lal Butail,
Sports Club & Tea Garden Resort,
R/o Bundla Tea Estate, Chopati,
Palampur H.P.-176061 **Complainant**

V/s.

HPSEBL & Others.

Respondents

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

2. The Sr. XEN, (E) Division No.1,
HPSEBL, Palampur,
Distt. Kangra, (H.P.)

3. The Assistant Engineer,
Electrical Sub-Division No.1 Palampur,
HPSEBL, District Kangra (H.P.). **Respondents**

Final hearing:-18.07.2023.

<u>Counsels:-</u>

Complainant 1. Sh. Parshant Sharma (Advocates)

Respondent 1. Sh. Rajesh Kashyap, Advocate
2. Sh. Kamlesh Saklani, U.S Law

Date of Decision: -04.08.2023

Complaint No 3131/2/23/14

Dinesh Butail

Vs

Himachal Pradesh State Electricity Board Ltd and Ors

BRIEF FACTS OF CASE–

(1) Complaint is filed under regulations 16, 17 and 18 of the HPERC (Consumer Grievances Redressal Forum and Ombudsman) Regulations, 2013 by Sh Dinesh Butail, s/o Late Sh Kunj Bihari Butail, proprietor Infinite Sports Club & Tea Garden Resort, resident of Bundla Tea Estate, Chopati, Palampur, Distt. Kangra, HP-176061;

(2) The Complainant is a Commercial Supply (CS) consumer of Respondent HPSEBL, bearing Consumer ID 100009002509. The Complainant has Connected Load of 299 KW with Contract Demand as 210 KVA;

(3) The Complainant is aggrieved by the impugned monetary demand on account of past period arrears of Rs 28,68,599/= raised to it by the Respondent HPSEBL as sundry item in electricity bill dated 08.06.2022 **(Annexure C-4 Colly)** also raised vide Demand Notices dated 23.06.2022 **(Annexure C-1)** and dated 13.12.2021 **(Annexure C-2)**. These past period arrears are due to incorrect application of multiplication factor (MF) of 'one (1)' instead of 'eight (8)' which resulted in less billed consumption of 79,883 units instead of 6,39,064 units, for the period from 31.10.2018 to 08.05.2020 and thus short recovery of Rs 28,68,599/=. The error of incorrect application of multiplication factor was detected at the behest of Audit / Audit Report dated 15.04.2021 **(Annexure R-1)** for the Audit period from April 2016 to March 2020. The ibid sundry item also includes in it a

monetary demand of Rs 10,500/= on account of Complainant availing supply at LT instead of HT for the period April 2020 to March 2021 (Total amounting to Rs. 28,79,099/-);

COMPLAINANT –

(4) That it has never defaulted in the payment of electricity bills. **(Annexure C4 Colly)**;

(5) That the disputed amount stands paid vide Cheque dated 16.08.2022 **(Annexure C-3)**;

(6) That it was never in receipt of demand Notice dated 13.12.2021 **(Annexure C-2)**, which was only provided to it after intervention by Respondent No 1;

(7) That it was the wrong deeds of the Respondent by applying wrong multiplication factor and further by not issuing the demand Notice within limitation period of 2 years and therefore the Complainant is not liable to be penalized under the principle of 'juri ex injuria non oritur' and 'audi alteram partem';

(8) That the Respondent failed to serve Notice to the Complainant within the limitation period of 2 years as provided in Section 56 of the Electricity Act, 2003 and thus the Respondent has lost shelter of provisions of Section 17 of the Limitation Act, 1965. Thus Respondent has no authority to issue Notice of recovery of arrears and therefore amount paid be refunded with interest;

(9) That an amount wrongly paid by the Complainant but against which the present complaint is preferred amounts to 'payment under protest'. The Hon'ble Supreme Court in the matter titled Maftlal Industries Limited Versus Union of India etc decided on 19.12.1996, has observed that any

payment which has been challenged before authority of law is deemed to be payment under protest;

(10) In its Rejoinder as well as arguments, the Complainant has contested the stand of the Respondent on the meaning of the expression “first due” appearing in ibid Section 56(2). Per Complainant the judgements of the Hon’ble Apex Court cited by the Respondent, in fact support the case of the Complainant and not the Respondent. The stand of the Respondent with respect to the expression “first due” is not applicable to it which has to be from the date when the mistake was first discovered i.e in May 2020 when the Audit was done and thus there is a delay of more than 2 years to mention the same as arrears in bills which was only done when the said period of 2 years had expired in electricity bill dated 08.06.2022;

(11) Complainant has prayed for Refund of entire amount with interest in view of the limitation period of 2 years under the provisions of section 56(2) of the Electricity Act, 2003 and on grounds that the Respondent failed to serve Notice on or before 23.06.2022 during the limitation period of 2 years i.e for the period of arrears from 31.10.2018 to 08.05.2020.

<u>RESPONDENT –</u>

(12) That the Complainant is liable to pay the disputed amount raised at the behest of RAO Audit **(Annexure R-1)** which pointed out wrong application of multiplication factor (MF) of 1 instead of 8 by the Respondent HPSEBL, for the electricity units billed to the Complainant during the period from 31.10.2018 to 08.05.2020;

(13) That the disputed amount has already been deposited without protest by the Complainant vide Cheque dated 16.08.2022;

(14) That the demand raised by the Respondent is legal and in accordance with law laid down by the Hon'ble Apex Court in Civil Appeal No. 1672 of 2020 read with judgement dated 5th October, 2021 in Civil Appeal No. 7235 of 2009, wherein interpretation of Section 56(2) of the Electricity Act, 2003 qua the term "first due" has already been settled;

(15) During the arguments stage in the matter, the Respondent argued that because electricity to the extent of 8 times of that billed by the Respondent had actually been consumed by the Complainant in the past, which was discovered at a later stage by an audit party, thus the Respondent was well within its right to raise bill of arrears at a later stage and recover the statutory levies in accordance with the ibid mentioned judgements passed by the Hon'ble Apex Court. Further, that in the event these are not recovered from the Complainant who has consumed electricity, the loss is either borne by the Respondent distribution licensee or passed on to other consumers;

(16) That the complaint be dismissed in view of aforesaid mentioned facts.

ORDER

(17) 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 notified by the HPERC, amendments thereto and record as facts along with pleadings of the parties and the law cited by them. 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;

(18) At the outset, the Forum agrees with the contention of the Complainant that in view of the judgement passed by the Hon'ble Apex Court on 19.12.1996 in the matter of Maftlal Industries Limited Versus Union of India etc, the payment made by the Complainant against the impugned Bill / Demand Notices is deemed to be payment under protest,. The Forum holds that the Complainant has come before this Forum by way of complaint being aggrieved by the action of the Respondent and therefore the said payment made by the Complainant is deemed to be payment under protest. The Forum now proceeds to determine the complaint on merits -

(19) The Forum observes that the Complainant has neither denied the consumption of electricity nor has it denied the wrong application of multiplication factor (MF) by the Respondent on the basis of which monetary demand of Rs 28,68,599/= for past period has been raised by the Respondent. The Complainant has also not laid challenge to the monetary demand of Rs 10,500/= as being wrong or being against the Regulations notified by the Ld HPERC on account of availing supply at LT instead of HT. The Complainant has also not shown any mala-fide in the action of the Respondent in this regard. The Complainant has simply raised the legal vires of the Respondent to raise the monetary demand of Rs 28,79,099/- in view of the condition of limitation of 2 years provided under section 56(2) of the Electricity Act, 2003;

(20) On the other hand the Respondent has defended its action to raise monetary demand as past period arrears, by citing and relying on various Judgements passed by the Hon'ble Apex Court while interpreting Section 56 of the Electricity Act, 2003;

(21) On examining the impugned monetary demand of Rs 28,79,099/- raised by the Respondent HPSEBL to the Complainant by way of Bill dated 08.06.2022 and Demand Notices dated 23.06.2022 and dated 13.12.2021 **(Annexure C4 Colly /Annexure C-1 / Annexure C2)**, it is observed that the monetary demand of Rs 28,68,599/= has been raised by the Respondent at the behest of wrong application of multiplication factor (MF) of one (1) instead of eight (8) to the metered consumption for the past period from 31.10.2018 to 08.05.2020, which was later noticed and pointed out by the RAO Audit team vide its Report dated 15.04.2021 received by the Respondent on 19.04.2021 **(Annexure R1)** and another monetary demand of Rs 10,500/= (**Annexure C-1)** on account of Complainant availing supply at LT instead of HT for the period April 2020 to March 2021 (Total amounting to Rs. 28,79,099/-);

(22) After examining the record, facts and settled position of law coupled with provisions of the Electricity Act, 2003 and Regulations notified by the Ld HPERC on the matter, it is established that in view of the settled position of law laid by the Hon'ble Apex Court in the matter titled as Assistant Engineer (D1) Ajmer Vidyut Vitaran Nigam Ltd and Anr Vs Rahamutullah Khan alias Rahamjula in Civil Appeal No 1672/2020 decided on 18.02.2020 and M/s Prem Cottex Vs Uttar Haryana Vijli Vitran Ltd in Civil Appeal No7235 of 2009 decided on October 5, 2021, the issue of recovery of past dues of arrears by the DISCOM is no more res-integra;

(23) In the instant matter, this Forum while dealing with the condition of limitation under section 56(2) of the Act, 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 / demand 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;

(24) In the ibid Judgment of the Hon'ble Supreme Court dated 18.02.2020, which refers to other Judgments as well, electricity has also been held to be 'goods' by a constitution bench of the Hon'ble Apex Court in a case titled State of Andhra Pradesh Vs National Thermal Power Corporation Ltd. Further, as also referred to in the Judgment ibid, under the Sale of Goods Act, 1930, a purchaser of goods is liable to pay for it at the time of purchase or consumption and that the quantum and time of payment may be ascertained post facto either by way of an agreement or the relevant statute;

(25) It is therefore clear from settled law that while the consumer uses electricity being a good, the distribution licensee charges for this electricity / good at

the specified tariffs/ charges of electricity, which in the State of Himachal Pradesh are determined by the Ld HP Electricity Regulatory Commission (HPERC) vide its Tariff Orders passed in pursuance to Regulations framed under the Electricity Act, 2003. Thereafter, these tariffs / charges are applied to the consumption or goods and thereafter a Bill or monetary demand is raised to the consumer;

(26) Having gone through the instant case and having heard the matter by way of arguments extended by the parties, this Forum holds that there was mistake or bona-fide error by the Respondent HPSEBL in not applying the correct multiplication factor (MF) of eight (8) as against wrong factor of one (1) to the metered consumption being made by the Complainant during the impugned period. Multiplication factor (MF) is a condition of meter reading. This error caused the Complainant to be billed in the past for 1/8th of the actual electricity consumed and eventually resulted in the creation of past arrears / dues recoverable from the Complainant. This fact has not been disputed by the Complainant;

(27) This aforementioned fact not having been disputed by the Complainant, the Forum, on the anvil of ibid interpretation rendered by the Hon’ble Apex Court, also holds that the Complainant as the purchaser of goods, in the instant case being the electricity consumed in the past, was liable to pay for it at the time of purchase or consumption in accordance with the prevailing statute. The Respondent in the past had erred in not fully charging for this electricity / good at the specified tariffs/ charges of electricity. However, on this error being later noticed and pointed by the Audit Report received by the Respondent on 19.04.2021 **(Annexure R-1),** the Respondent billed the Complainant as the purchaser of goods only for the shortfall in electricity

consumption vide electricity bill dated 08.06.2022 **(Annexure C-4 Colly).** Similarly is the case of the demand of Rs 10,500/= (**Annexure C-1)** on account of Complainant availing supply at LT instead of HT for the period April 2020 to March 2021. Availing supply at LT instead of HT results in creation of a statutory charge on account of Tariff Orders passed by the Ld HPERC and the Respondent is liable to recover and the Complainant is liable to pay for the shortfall ex post facto on this count as well, if not paid earlier ;

(28) The Forum is not inclined to agree with the arguments of the Complainant on its interpretation of the expression "first due". Hon'ble Apex Court Judgment dated 18.02.2020 in unambiguous terms has interpreted section 56(2) of the Electricity Act, 2003, wherein 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. This Forum is not inclined to accept any another interpretation as is being given by the Complainant to the expression "first due" nor is it within its authority to give the expression any other meaning. Accordingly, in the instant matter, the Forum holds the 'first due" to be from 08.06.2022 and therefore rejects the arguments of the Complainant on the expression "first due";

(29) In the instant matter, the provisions of Electricity Act, 2003 are clearly applicable. Thus the Forum accordingly also rejects the contention of the Complainant on the applicability of provisions of Section 17 of the

Limitation Act, 1965, which are clearly not applicable in the instant matter in wake of the express provision under Section 56(2) of the Electricity Act, 2003. Further, the Forum from examination of record also observes that the billing error was discovered on receipt of the Audit Report **(Annexure R-1)** which in this case is on 19.04.2021 and the Bill of sundry was thereafter raised on 08.06.2022 **(Annexure C-4 Colly)** and this is also well within the limitation period of 2 years as provided in the Electricity Act. Seen from any angle, it is amply clear that the demand raised by the Respondent is not hit by the limitation condition of 2 years under section 56(2) of the Electricity Act;

(30) Thus on the anvil of the interpretations on the limitation given under section 56(2) of the Electricity Act, 2003 rendered vide ibid Hon'ble Apex Court Judgments referred supra, the Forum holds 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;

(31) Further, this Forum is of the considered opinion that the Respondent HPSEBL being a distribution licensee cannot recover any tariff / charges in excess of that specified by the Ld HPERC. These Tariff Orders lay out statutory charges. At the same time, it is also relevant in the context of the instant matter, that the Respondent HPSEBL being a distribution licensee, is bound to recover the cost / price of electricity consumed by a consumer strictly, as per tariffs /charges that are determined and specified by the Ld HPERC vide its Tariff Orders. Accordingly, the consumer is bound to pay for the electricity consumption at the determined tariffs / charges being of statutory nature. 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 goods, may result either in permanent financial loss to the distribution licensee being a regulated public utility or with the burdening of this utility's loss upon other consumers. Both of these situations or eventualities are bad and against mandated provisions of Tariff Regulations on the matter;

(32) The Forum is also of the considered opinion that non-recording of actual consumption cannot allow free ride to any consumer and consumer is liable to make good any such loss to the Respondent and make payments towards the full metered consumption for the sole reason that electricity/energy to that extent has actually been consumed by the consumer. No one is entitled to adversely use the deficiencies in a system to their advantage, such as to cause loss in any way to the system. Not allowing such loss to be recovered likely results in malpractices and connivances which are detrimental to the system;

(33) In the matter, this Forum concludes that the Respondent HPSEBL did make a bona-fide mistake / error in the past by missing to raise statutory amounts in the original electricity bill arising out of less recording of consumption due to error or mistake of wrong application of multiplication factor (MF) of one (1) instead of eight (8), which resulted in less consumption being billed to the Complainant and which went unnoticed for some time. The Complainant has actually consumed electricity which is eight (8) times of that which was originally billed. The Respondent is certainly within its legal rights to recover the statutory charges towards the actual consumption made by the Complainant and to raise monetary demand towards past arrears or dues of statutory nature, not raised earlier due to any mistake as has been held in Hon'ble Apex Court Judgment dated 18.02.2020 in Civil Appeal

1672/2020 while interpreting section 56(2) of the Electricity Act, 2003. However, onus would still lie on the Complainant to show that such arrears have been calculated wrongly which is conspicuously missing on the part of the Complainant;

(34) In view of foregoing, the Forum does not find force in the complaint. No illegality is seen in the impugned demand of Rs 28,79,099/- raised as sundry in energy bill dated 08.06.2022 **(Annexure C4 Colly),** which is upheld. The impugned demand having been held to be legal is payable by the Complainant and thus not refundable by the Respondent HPSEBL;

In the aforesaid terms, the instant complaint is disposed of on merits, in favor 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 04.08.2023 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.

Dated:04.08.2023
Place: Shimla

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

<u>Notice</u>

Registered

<u>CONSUMERS GRIEVANCES REDRESSAL FORUM AT KASUMPTI SHIMLA-171009.</u>

No.CGRF/Complaint No. 3131/2/23/14 Dated:-

Mr. Dinesh Butail,
S/o Late Sh. Kunj Bihari Lal Butail,
Sports Club & Tea Garden Resort,
R/o Bundla Tea Estate, Chopati,
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V/s.

HPSEBL & Others. **Respondents**

<u>Complaint No. 3131/2/23/14</u>

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3. The Assistant Engineer,
Electrical Sub-Division No.1 Palampur,
HPSEBL, District Kangra (H.P.).

Respondents

The Certified copy of final order dated 04.08.2023 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.

<u>DA:-As above.</u>

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