Complaint No 1523/202401/01

M/s Cement Corporation of India Ltd.
Vs
HPSEBL 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 Cement Corporation of India Ltd Rajban Cement Factory, Tehsil Paonta Sahib, District Sirmaur, HP is a Large Industrial Power Supply (LIPS) category consumer of the Respondent HPSEBL, bearing consumer ID 100012001540 with Permanent or sanctioned Contract Demand of 5000 kVA;

(3) The distribution licensee HPSEBL is the Respondent;

(4) In the instant complaint, the Complainant in December 2019 temporarily revised/ reduced its contract demand to 4700 kVA which was affected by the Respondent in January 2020. Subsequent application by Complainant for permanent reduction of contract demand was submitted in May 2020 but was not pursued by the Complainant and was also not sanctioned by the Respondent;

(5) In the instant complaint, grievance has been raised that the action by the Respondent to raise monetary demand of Rs 43,20,000/= vide Demand letter / Notice dated 03.07.2023 **(Annexure C5)**, further raised as sundry in electricity Bill dated 05.12.2023 **(Annexure C6)** being unjust, illegal, arbitrary and contrary to principles of natural justice, deserves to be quashed and set aside. The said monetary demand is for the period 01.04.2020 to 31.07.2023 (40 months).

(6) On the other hand it is the case of the Respondent that it has raised the said monetary demand pursuant to amended regulation 3.10 of the HP Supply Code, 2009 (2^{nd} Amendment) framed by the HP Electricity Regulatory Commission (or the HPERC) and that it being a distribution licensee is entitled to recover past dues of arrears in

accordance with law laid down by the Hon'ble Apex court and that the Complainant is bound to pay charges of statutory nature.

COMPLAINANT –

(7) That Complainant applied for Temporary Contract Demand reduction from 5000 kVA to 4700 kVA on 05.12.2019 which was effected by the Respondent in January 2020 and bill against this reduced contract demand for the period 01.01.2020 to 02.02.2020 was raised by Respondent on 17.02.2020 (**Annexure C2**);

(8) That after the temporary revision as above was effected, complainant applied for permanent reduction of contract demand and deposited fees vide payment receipt dated 01.02.2020 (**Annexure C3)**;

(9) That it has not received revised load sanction letter from Respondent despite its letter dated 13.05.2023 (**Annexure C4)** and has never been communicated prior to demand letter dated 03.07.2023;

(10) That Respondent has raised monetary demand of Rs 43,20,000/= for the period 01.04.2020 to 31.07.2023, vide Demand letter / Notice dated 03.07.2023 **(Annexure C5)** which deserves to be quashed and set aside**;**

(11) That the monetary demand of Rs 43,20,000/= has further been raised as sundry in Bill dated 05.12.2023 **(Annexure C6)** and the Contract Demand has been reverted to 5000kVA since September 2023 by the Respondent who has stated that this short assessment came into its knowledge at the behest of Audit done from April 2020 to July 2020;

(12) That the impugned acts of omission and commission by Respondent and impugned letter dated 03.07.2023 **(Annexure C5)** are unjust, illegal, arbitrary and contrary to principles of natural justice and deserves to be quashed and set aside;

(13) Complainant has prayed that impugned letter dated 03.07.2023 **(Annexure C5)** and other letters demanding short assessment of Rs 43,20,000/- be quashed and set aside, that Respondent be restrained from adding other charges including sundry charges other than

consumption charges and that directions be given to the Respondent to revert its load to the level of 4700 kVA which has been changed to level of 5000 KVA wef September 2023 and to issue load sanction certificate for revised load of 4700 kVA with effect from due date.

RESPONDENT –

(14) That it has raised the said monetary demand of Rs 43,20,000/= on 03.07.2023 for the period 01.04.2020 to 31.07.2023 pursuant to amended regulation 3.10 of the HP Supply Code, 2009 (2nd Amendment) framed by the HP Electricity Regulatory Commission (or the HPERC).

(15) That it is denied that the Complainant applied for Permanent Revision of Contract Demand on 01.02.2020 vide receipt dated 01.02.2020. This was applied by the Complainant on 04.05.2020 but could not be implemented because the Complainant did not deposit the statutory processing fees. The A&A (or Application and Agreement) form is at **Annexure R3**;

(16) That Respondent is bound to recover cost / statutory price of electricity as tariffs determined by the HP Electricity Regulatory Commission;

(17) That past dues of the Respondent can be recovered in accordance with Hon'ble Apex Court Judgement dated 18.02.2020 in Civil Appeal No 1672 of 2020 and Judgement dated 05.10.2021 in Civil Appeal No 7235 of 2009 and Judgement in a matter of State of Andhra Pradesh Vs National Thermal Power Corporation Ltd where-in electricity has been held to be a "goods";

(18) That the Complainant has not approached the Forum with clean hands and suppressed true and material facts and thus complaint is liable to be dismissed.

ORDER

(19) 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) 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;

(20) Forum observes that the Complainant in its complaint has not raised any legal basis to dispute the monetary demand of Rs 43,20,000/= raised on 03.07.2023 **(Annexure C5)** by the Respondent for the period 01.04.2020 to 31.07.2023 (40 months), which the Respondent states that this monetary demand for past dues is in terms of code 3.10 of the Supply Code, 2009 and this being of statutory nature is recoverable as permitted to it under the law;

(21) Complainant has merely stated that acts of omission and commission by Respondent and impugned letter dated 03.07.2023 **(Annexure C5)** are unjust, illegal, arbitrary and contrary to principles of natural justice;

(22) Forum also observes that the Complainant has wrongly submitted on record that it had paid the requisite fees on 01.02.2020 for applied permanent reduction of contract demand to 4700 kVA. During the hearing in the matter, the Counsel for the Complainant admitted that this was an inadvertent mistake.

(23) Thus, in the complaint the fact remains that the stated fees was deposited by the Complainant for reduction of Temporary Contract Demand only and not for Permanent reduction of Contract Demand. Fact also remains that the Complainant did not pursue its Application for Permanent Contract Demand submitted in May 2020

and neither did it deposit the requisite fees for the consideration of its case by Respondent. It is only on 13.05.2023 **(Annexure C5)** that the Complainant had written a letter in this regard to the Respondent but still did not deposit the requisite fees.

(24) In short, with regard to the complaint and this Order, fact remains that apart from Temporary revision of Complainant's Contract Demand in January 2020, there is no other revision of Contract Demand, Temporary or Permanent;

(25) This Forum also observes that the Respondent has cited Code 3.10 of the HP Supply Code, 2009 as the statutory basis for raising the impugned demand. While the Respondent has raised contention that it is within its legal right to recover arrears of past dues however, it is not the case of the Complainant that past dues of arrears cannot be recovered by the Respondent. The matter can therefore be decided squarely on the basis of ibid Code 3.10 and thus at the outset the Forum proceeds to discuss in detail the HP Supply Code, 2009 including Code 3.10 therein -

(26) 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, 2018 dated 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

(27) On perusal of the ibid HP Supply Code, 2009, the Forum finds that the concept of Temporary Contract Demand was first introduced by way of first (1st) 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 of Permanent nature;

(28) Before proceeding to determine the grievance raised by the Complainant, this Forum considers it necessary to briefly delve into the working of the Contract Demand (in KVA/ or MVA) –

(29) From the Supply Code, it becomes apparent that the Contract Demand, Permanent or Temporary, is a provision of the Electricity Supply Code and the Tariff Orders. It is a Demand (in KVA/ or MVA) contracted at the discretion of the consumer at the time of its 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 an option exercised and applied for by the consumer and sanctioned by the licensee, inter-alia with the

underlying purposes of billing of the consumer, for determining the Standard Supply Voltages at the time of connection 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 also regulated in accordance with the provisions of the Supply Code. 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. When the Supply Code regulates the revision of Contract Demand (in kVA or MVA), which is an option exercised by the consumer, then the concerned consumer is expected to keep a vigil at all times for the purpose of applying for or revising or managing its Contract Demand (in kVA or MVA), while simultaneously also keeping a vigil on its electricity consumption patterns by managing the peaks of its maximum Demands (in KVA or MVA), so as to keep both the contracted as well as the actual contract demand in synchronization and consequently the optimization of its electricity bills. Thus, it becomes clear to the Forum that the Contract Demand (in kVA) is a lever given in the hands of the consumers to manage their bills and Maximum Demand (in kVA) and consequently optimize their consumption patterns and electricity bills;

(30) On further perusal of the ibid Supply Code, Forum finds that the Supply Code First (1st) Amendment dated 11.06.2014, stipulated various conditions for Temporary revision of Contract Demand (in KVA or MVA) and these were first introduced therein 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;

(31) The First (1st) amendment, 2014 provided for permissible number of revisions in a year as two (2) with gap between successive revisions

as three (3) months. The subsequent amendment of Supply Code (ie Supply Code 2nd Amendment) notified on 31.07.2018 introduced therein certain ‘Provisos’ to the said Code 3.10. The Provisos specifically provided for total period of Temporary contract demand (in KVA or MVA) as six (6) months in a ‘Financial Year’. This 2nd amendment came into force from 01.04.2019 and is thus of relevance in the present matter;

(32) Forum finds that in the said provisos of the Supply Code 2nd amendment, the word or expression ‘financial year’ is the key in context of the instant complaint. When the financial year starts from 01st of April and ends on 31st of March, which is undisputed, it becomes clear from the said 2nd amendment that on 31st March of each financial year, the ‘Temporary Contract Demand’, as existing previously shall expire. The distinction between the Temporary and the Permanent (or sanctioned) Contract Demand is created here. From the 1st of April of the subsequent financial year, i.e when the financial year starts, the Contract Demand would get reset to the Permanent Contract Demand (in KVA or MVA) unless a fresh Temporary Contract Demand is re-applied by the consumer. It thus becomes the right of the Complainant to decide and exercise the option or discretion on the period of six (6) months in a financial year when the Complainant would desire a revision in its Contract Demand (in kVA or MVA) on temporary basis i.e Temporary Contract Demand (in kVA or MVA);

(33) Therefore, in our considered view, a consumer would be required to apply afresh for the Temporary Contract Demand (in KVA or MVA) or for its re-revision in any new financial year, else the previously existing Temporary Contract Demand (sanctioned or deemed sanctioned) shall automatically get dissolved and cease to remain effective. Consequently, the last sanctioned Permanent Contract

Demand (in KVA or MVA) shall automatically stand and become effective;

(34) 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 and safely sums up and concludes that from 01.04.2019, i.e when the financial year starts or whenever any financial year starts, then any monetary demand (in Rs) raised by the Respondent HPSEBL on a consumer 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), and that is if such is applied or reapplied after 01.04.2019 by the consumer. In absence of such application or re-application for Temporary Contract Demand, this monetary demand shall automatically get based upon Permanent sanctioned Contract Demand which was last applied by the consumer. This process shall follow for each / new financial year. This is the essence of ibid Code 3.10 of the Supply Code 2nd Amendment;

(35) Coming to the instant complaint, it is without dispute that financial year is from 01st April to 31st March and the Permanent sanctioned Contract Demand of the Complainant is 5000 kVA;

(36) It is observed by this Forum that the Complainant has admitted on record that it had temporarily revised its Contract Demand to 4700 kVA in Financial Year 2019-20. Thereafter, Complainant failed to revise or apply afresh even in or after the start of the new financial year 2020-21. Consequently, for the Financial Years 2020-21, 2021-22 and up to July of Financial Year 2022-23, the Respondent HPSEBL based on the Permanent (or sanctioned or original) Contract Demand of the Complainant, 2018, raised the impugned

monetary demand on 03.07.2023 **(Annexure C5)** followed by this amount being raised as sundry in electricity Bill dated 05.12.2023 **(Annexure C6).** This was done at the behest of the provisions of the Supply Code;

(37) In accordance with the Supply Code 2nd Amendment, the end of the financial year which is signified by the date 31st March of the year, on this end date the 'Temporary Contract Demand' of the Complainant as existing, expired and ceased to exist. Thus, from the start of the next financial year i.e 01st April 2020, the Complainant was expected to apply afresh for the Temporary Contract Demand (in KVA or MVA), if it so intended. It was the choice of the Complainant to choose its Temporary Contract Demand as well as the six (6) months of Temporary Contract Demand, either continuous or in the case of continual, then its period and duration, in the respective financial year. In the instant complaint, the Complainant had failed to get its Permanent Contract Demand revised and also failed to apply afresh for the 'Temporary Contract Demand' from 01.04.2020 onwards, ie the start of financial year 2020-21 and was thus liable to be billed for the impugned period from 01.04.2020 onwards on the basis of sanctioned Permanent Contract Demand;

(38) From foregoing discussion, it can safely be concluded by the Forum, that it is Complainant's own fault of not re-applying for a fresh 'Temporary Contract Demand beyond 01.04.2020 ie after the start of the financial year and it is the Complainant's failure to not have pursued its Application for reduction of Permanent Contract Demand in the subsequent years or even applied afresh for this. Because the Complainant failed to re-apply afresh for Temporary Contract Demand beyond 01.04.2020 and failed to revise its Permanent Contract Demand even after the start of the new financial year, which was an option to be exercised by the Complainant, then

the Complainant is bound to be charged on the basis of its original sanctioned Permanent Contract Demand which is 5000 kVA. Thus the submissions and arguments on record made by the Complainant are found to be grossly lacking;

(39) In view of foregoing discussion, the Forum does not find anything on record that may substantiate or support the grievance of the Complainant to be based on any valid legal or factual ground. The Forum clearly finds the submissions on record raised by the Complainant as baseless;

(40) No fault is seen by the Forum in the action of the Respondent to raise monetary demand in accordance with the Regulations / Code. These demands are of statutory nature which can be recovered at later stages as well in accordance with law as cited by the Respondent. The Forum holds that the Respondent is correct in its interpretation and application of the provisions of ibid Code 3.10 of the Supply Code 2nd Amendment. 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. The Forum does not find any illegality in the impugned monetary demand dated 03.07.2023 **(Annexure C5)** / sundry in Bill dated 05.12.2023 **(Annexure C6)** for Rs 43,20,000/= raised by the Respondent HPSEBL, which this Forum observes 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. Thus, on this score alone the complaint deserves to be dismissed as being without any legal basis;

On aforesaid terms, the impugned monetary demand dated 03.07.2023 **(Annexure C5)** / sundry in Bill dated 05.12.2023 **(Annexure C6)** for Rs 43,20,000/=, raised by the Respondent HPSEBL is accordingly upheld. The Respondent is within its legal rights to recover statutory levies and the Complainant is liable to pay the same. Prayer as made by Complainant for directions to Respondent is accordingly rejected;

The Complainant is directed to pay the unpaid amount of monetary demand dated 03.07.2023 **(Annexure C5)** / sundry in Bill dated 05.12.2023 **(Annexure C6)** for Rs 43,20,000/= within a period of 10 days from this Order.

On non-payment of the said ibid amount, the Respondent shall be at liberty to take action as per extant Regulations / Rules / law.

The complaint is accordingly decided on merits in favour of the Respondent HPSEBL and is disposed as **Dismissed**.

Before the Forum finally concludes the instant complaint, it wishes to appreciate on record the role of Sh Kamlesh Saklani, Under Secretary (Law) of the Respondent, in assisting the Forum in understanding the actual import of the Supply Code framed by the HP Electricity Regulatory Commission and thus in effectively determining and settling the matter;

Parties are left to bear their own costs.

Order is announced before the parties present today on 30.09.2024 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: 30.09.2024
Place: Shimla:

--Sd--	**--Sd--**
Anil Sharma	**Tushar Gupta**
(Member)	**(Chairperson)**

CONSUMERS GRIEVANCES REDRESSAL FORUM AT KASUMPTI, SHIMLA

Complaint No.: - 1523/202401/01
Date of Admission:- 12.01.2024
Quorum: - Er. Tushar Gupta, Chairman
Sh. Anil Kumar Sharma Member

In ref:-

M/s Cement Corpration of India
Rajban Cement Facotory Tehsil
Paonta Sahib Distt. Sirmour HP **Complainant**

V/s.

HPSEBL & Others. **Respondents**

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

2. The Superintending Engineer,
(OP) Circle HPSEBL Nahan Distt
Sirmour (HP).

3. The Executive Engineer,
Electrical Division, HPSEBL Gondpur
Paonta Sahib Distt. Sirmour (HP).

4. The Assistant Engineer,
Electrical Sub-Division,
HPSEBL, Sataun,
District Sirmour (H.P.). **Respondents**

Final hearing:- 24.09.2024.

Counsels:-

Complainant 1. Sh. Shekhar Badola, Advocate

Respondent 1. Sh. Rajesh Kashyap, Advocate
2. Sh. Kamlesh Saklani, Under Secretary Law.

Date of Decision: -30.09.2024.

Notice

Registered

CONSUMERS GRIEVANCES REDRESSAL FORUM AT KASUMPTI SHIMLA-171009.

No. CGRF/Complaint No. 1523/202401/01 Dated:-

M/s Cement Corpration of India
Rajban Cement Facotory Tehsil
Paonta Sahib Distt. Sirmour HP **Complainant**

V/s.

HPSEBL & Others. **Respondents**

Complaint No. 1523/202401/01

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

2. The Superintending Engineer,
(OP) Circle HPSEBL Nahan Distt
Sirmour (HP).

3. The Executive Engineer,
Electrical Division, HPSEBL Gondpur
Paonta Sahib Distt. Sirmour (HP).

4. The Assistant Engineer,
Electrical Sub-Division,
HPSEBL, Sataun,
District Sirmour (H.P.). **Respondents**

The Certified copy of final order dated 30.09.2024 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.

Sd/-

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