

CONSUMERS GRIEVANCES REDRESSAL FORUM AT KASUMPTI, SHIMLA-9.

No. CGRF/Complaint No. 1521/3/20/035

Dated:-

Complaint No.: - 1521/3/20/035
Date of Admission: - 16.09.2020
Quorum: - Er. M.G Sharma, Chairman.
Er. Vikas Gupta, Member.

M/s Upkar Pharmaceutical, Plot No. 101,
Industrial 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 80 KW and Contract Demand 80 KVA. The Complainant have been issued demand notice dated 25.06.2020 amounting to Rs. 9529/- (Annexure C-2) 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 Rs.31490/- vide Annexure C-1.
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 further stated that 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 have raised a monthly consumption invoice no 17000247632 to the

- tune of Rs. 61,453/- on 17.07.2020 and in this invoice the Respondents have again included an arrear of Rs. 5760/- which is highly illegal, contrary to prevailing laws, direction and the Electricity Act.
5. The Complainant in his 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. The Complainant stated that the 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. 61453/-. It is pertinent to mention here that as per the invoice the amount which was due to pay was Rs. 61453/- 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. 61453/- 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. 61453/- to Rs. 149890/- 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. The Respondent had disconnected the electricity connection of the applicant company in the early morning of 14.08.2020 due to which applicant had to deposit the entire illegal demand to the tune of Rs. 1,49,890/- including the arrears to the tune of Rs. 88,437/- as such Respondent had caused irreparable loss to the applicant company and the functioning as well as production of the company had been disturbed . It is pertinent to mention here that due to the aforesaid illegal action the applicant was forced to pay the entire illegal demand of Rs. 1,49,890 under protest. It is further submitted that the aforesaid action of the Respondents is highly illegal contrary to the rules and regulation. Further, the non acceptance of payment qua the invoice amounting Rs. 61,453/- is bad in the eyes of law.
 9. The Complainant has termed the disconnection of power supply as illegal as well as recovery amounting to Rs. 88,437/- only made by the Respondents along with the regular energy bill amounting to Rs. 61,453/- only and further requested to compensate on the loss suffered due to disconnection of electricity.
 10. Respondent HPSEBL in their submissions, relied on the consumers including the Complainant have been undercharged due to wrong application of tariff as the Complainant category is medium supply and whereas the Complainant has been charged for SMS which has resulted into under charges due to wrong application of the tariff and accordingly the replying respondents have calculated the amount of Rs. 9529/- on account of recovery of wrong application of the tariff from 06/2017 to 12/2017 and issued demand notice dated 25.06.2020 as is evident from

the Annexure RA-1 similarly, during the course of the same audit, it was also pointed out by the RAO party that Medium Supply Consumers including the Complainant were undercharged because whole consumption charges have been charged from the consumers including the Complainant on normal rate and peak hour charges have not been charged from the consumers including the Complainant for the period 12/2015 to 04/2016 and that has resulted into the short assessment of during peak hour consumptions charges and accordingly Respondents has calculated the amount of Rs. 31490/- and issued demand notice dated 25.06.2020 Annexure RA-2.

11. As it is Internal Audit Party, while auditing found that large supply consumer including Complainant have also been undercharged from 04/2017 to 12/2017 and the undercharge, was due to SMS Tariff instead of MIS & LIPS tariff. The sanctioned contract demand of the Complainant is 80 KVA and fall under the category of MIPS consumers. The Complainant was wrongly charged @ 2% LVSS for SMS, whereas the Complainant has to be charged @ 5% LVSS being a MIPS consumer.
12. Respondent has issued two demand notices RA-1, RA-2 placed on record. Demand notice 25.06.2020 for Rs. 9529/- and 31490/- for LVSS & short assessment of peak load hour consumption charges respectively, It is further submitted that the sanctioned contract demand of the Complainant is 80 KVA and as per tariff order, the Complainant was to be charged for MIPS tariff. The supply voltage and metering voltage of the firm are on LT and as per the schedule of Tariff the load above 50 KW, the LVSS to be charged @5% of the energy charges. The Complainant has committed peak load hour violations as is evident from

the bills for the month of 06/17 to 12/17 Annexure RA-8 to RA-12 placed on record.

13. Short assessment of during peak load hours consumptions charges is first time demanded from the Complainant on 25.06.2020 after the internal audit had detected the mistake qua application of the wrong tariff and short assessment on account of peak load violation hours.
14. The bill for the month of July 2020 amounting to Rs. 61453/- was raised to the Complainant including the recovery of Rs. 5760/- on account of demand charges for the period April 2020 to June 2020, which were to be recovered from the Complainant in equal installments 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 31.5.2020.
15. 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 premises.
16. The Complainant has deposited the billed amount of the electricity consumption charges and the electricity power supply was restored to premises.

17.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 raised by 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 the replying respondents is well within time

18.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 with the utmost respect 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.

19. Taking cognizance of aforesaid judgments in the present case the period of limitation would commence from the date of discovery of mistake and subsequent issual of demand notices dated 25.06.2020 and not prior therefore the action of the Respondent in conformity with instruction No 38 of the Sales Manual, Electricity Supply Code Regulation 2009 and CGRF and Ombudsman Regulation -2013.

Accordingly the demand notices issued by the respondent HPSEBL of dated 25.06.2020 are correct and have been rightly charged. In the aforesaid terms, the complaint is disposed of as devoid of merits. The judgment reserved on dated 28.10.2021 and 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: -15.11.21

Sd/-
(Vikas Gupta)
(Member)

Sd/-
(M.G. Sharma)
Chairman

Notice

CONSUMERS GRIEVANCES REDRESSAL FORUM AT KASUMPTI SHIMLA-171009.
No. CGRF/Complaint No. 1521/3/20/035

Registered

Dated:-

M/s Upkar Pharmaceutical, Plot No. 101,
Industrial Area, Gondpur, Tehsil, Paonta Sahib,
District Sirmour (HP).

Complainant

V/s.

HPSEBL & Others.

Respondents

Complaint No. 1521/3/20/035

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. Assistant Executive Engineer,
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.