

CONSUMERS GRIEVANCES REDRESSAL FORUM AT KASUMPTI, SHIMLA-09.
No. CGRF/Complaint No. 1413/4/22/36

Complaint No.:- 1413/4/22/36

Date of Admission:- 20.12.2023

Quorum:- Er. Tushar Gupta, Chairman
Er. Vikas Gupta, Member

In ref:-

M/s Kusum Gupta & Associates, Through
Sh. Chander Prakash Gupta,
S/o Sh. Murari Lal Gupta,
O/o Vill. Nagli, Oachhghat,
Tehsil& Distt. Solan (HP).
V/s.

Complainant

HPSEBL & Others.

Respondents

1. The Executive Director (Pers.),
HPSEBL, Vidyut Bhawan,
Shimla-171004.
2. The Executive Engineer,
Electrical Division, HPSEBL,
Solan, Distt. Solan (HP).
3. Assistant Engineer,
Electrical Sub-Division No.3,
HPSEBL, Solan,
District Solan (H.P.)

Respondents

Final hearing:-29.03.2023

Counsels:-

Complainant 1. Sh. Bhagwan Chand, Advocate

Respondent 1. Sh. Anil Kumar God, Advocate
2. Sh. Kamlesh Saklani, Under Secretary Law

Date of Decision: -29.03.2023

ORDER

BRIEF FACTS OF THE CASE –

- (1) Complaint has been filed under regulations 17 of the HPERC (Consumer Grievances Redressal Forum and Ombudsman) Regulations, 2013. The Complainant M/s Kusum Gupta & Associates, Murari Lal Memorial College of Nursing, Village Nagli, Oachhghat, Solan, HP, is a consumer of the Respondent HPSEBL, bearing Consumer ID 100008001931 and availing supply at 11kV;
- (2) The Complainant is aggrieved by the action of the Respondent HPSEBL to issue Demand Notice dated 02.12.2022 for an amount of Rs 29,70,629/= (Annexure-C1), for the period October 2014 to October 2022. The details of calculation of this amount (Annexure C2) from the Meter Reading Instrument (MRI) data sheets (Annexure C3) of the original meter and the Check Meter results have been enclosed with the Demand Notice;
- (3) The ibid Demand Notice has been issued by the Respondent HPSEBL at the behest of defective metering from October 2014 to October 2022.

COMPLAINANT –

- (4) Complainant submits that in the ibid Demand Notice it has been alleged that check metering equipment were installed from 23.08.2022 to 03.10.2022 to check accuracy of the existing (or original) meter due to phase missing in this meter and the existing meter was found slow by 62.5%. The documents supplied with the ibid Notice are totally illegal and baseless and therefore the alleged monetary demand raised by the Respondent is absolutely wrong, illegal, arbitrary and not payable by the Complainant.
- (5) Complainant also submits that there was no complaint as to tampering/removal and breaking of seals on the meter which were in-tact and that when it came into knowledge of Respondent, then meter had to be inspected in the Laboratory, whereas the Respondents have not conducted any test on the meter in presence of the Complainant. The Complainant has further submitted that it was illegal to install Check meter in the premises of the complainant on 23.08.2022 without conducting a test of the energy meter

and that the Check Meter can also be defective. The Check meter has also not been tested before its installation and it is not sufficient to install a Check meter to hold the accuracy of the energy meter.

- (6) Complainant further submits that the Respondents have been issuing regular energy bills and it is sheer negligence on part of Respondent who did not notice this defect while issuing bills from October 2014 and therefore the Complainant is not bound to pay the wrong, illegal and arbitrary demand of Rs 29,70,629/= (Annexure-C1) as the Respondents have committed wrong and illegality intentionally and deliberately;
- (7) During the Final hearing stage, while reiterating its complaint, the Complainant argued that as per the Reply of Respondent, the action of the Respondent was in pursuance to the Abridged conditions of Supply under the Respondent's Sales Manual, which are not applicable. The action of the Respondent ought to have been under Chapter IV of the HP Electricity Supply Code, 2009 specified under section 50 of the Electricity Act, 2003 by the HP Electricity Regulatory Commission. The Supply Code under Chapter IV provides for meter and metering equipment and as per the definitions given in sub-code 1.2.36 and 1.2.37 of the Supply Code, the meter includes the metering equipment. The Complainant has cited Order of the Hon'ble Chhatisgarh High Court in writ petition No. 2805 of 1993, titled M/s Beekey Hygiene Products Vs Madhya Pradesh Electricity Board and Ors decided on 30.06.2014 to show that meter includes metering equipment. Further, the action of the Respondent is not in accordance with sub-code 4.3 specified in respect of Testing of meters which was not followed by the Respondent and that in accordance with the law, the action of the Respondent for not getting the meter tested was wrong and illegal. Instead the Respondent installed a Check meter for which there is no provision in the Supply Code, as the accuracy of the Check Meter itself was doubtful. Therefore, the overhauling of consumer account could only be for maximum of six (6) months in terms of sub-code 4.4.8 (i) specified in the Supply Code;

- (8) The Complainant has sought relief in terms of Orders for declaring the monetary demand of Rs 29,70,629/= raised vide Demand Notice dated 02.12.2022, as wrong, illegal, arbitrary, unsustainable in the eyes of law;

RESPONDENT –

- (9) On the other hand, the Respondent HPSEBL has replied that the ibid amount of Rs 29,70,629/= raised vide Demand Notice dated 02.12.2022 (Annexure C1) is perfectly legal and valid which has been raised in terms of Supply Code Regulations. The Respondents have right to check the installed meter and that this is not a case of accuracy of meter but of defective CT/PT where phases missing was detected and the Test / Check meter was installed in pursuance to Abridged Conditions of Supply, only to determine the percentage of slowness of meter and therefore there is no need to send the meter to laboratory for testing. Thus, the impugned action of the Respondent is perfectly legal;
- (10) The MRI data, further confirmed with check meter reports, clearly demonstrate that the energy meter was slow by 62.5 % (Annexure R Colly). The MRI data is such that there is no scope of human interference. The MRI data of slowness of meter, has been retrieved from the system and this only further substantiates the results of the Check Meter. At present the billing of the Complainant is from Check meter. Thus, the arguments of the Complainant that Check meter can also be defective, are devoid of merit. The Complainant cannot evade statutory dues by construing the provisions of the Supply Code, 2009 in isolation;
- (11) The Respondent has submitted that the complaint is devoid of merit and therefore needs to be set aside.

FORUM –

- (12) 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, CEA (Installation and Operation of Meters) Regulations, 2006, HP

Electricity Supply Code, 2009 notified by the HPERC, amendments thereto and record as facts along with pleadings of the parties. This 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;

(13) Before the Forum proceeds in the matter, Forum feels it necessary to frame the issues for determination in the instant complaint –

- (a) Issue 1: Whether, this is a matter of Tampering of meter falling under section 126 or under section 135 of the Electricity Act, 2003 whereby there is unauthorized use of electricity through a tampered meter or whereby there is dishonest tampering of meter?;
- (b) Issue 2: Whether, Order of the Hon'ble Chhatisgarh High Court in writ petition No. 2805 of 1993, titled M/s Beekey Hygiene Products Vs Madhya Pradesh Electricity Board and Ors decided on 30.06.2014 is squarely applicable in the present circumstances of the instant matter?;
- (c) Issue 3: Whether the Meter Reading Instrument (or MRI) data is sufficient evidence to establish defective metering or even when the MRI data is available, is it necessary to undertake Testing of meter and/or metering equipment under provisions of code 4.3 of HP Electricity Supply Code, 2009, hereinafter referred to as the Supply Code?;
- (d) Issue 4: Whether, it is illegal and outside the powers of the Respondent HPSEBL, being the distribution licensee, to install a Check Meter?;
- (e) Issue 5: Whether the provisions of code 4.4.8(i) of Supply Code for the purpose of over hauling of account of Complainant for Defective Meters are applicable in the circumstances of the instant matter?;
- (f) Issue 6: Whether, the Respondent is within its rights to raise monetary demand as past period arrears on account of defective metering and whether Complainant is liable to pay this monetary demand so raised by the Respondent?.

- (14) At the outset Forum finds it expedient to reproduce the relevant provisions of definitions in the Supply Code and relevant provisions of code 4.3 and 4.4 of the Supply Code for the sake of clarity—

Quote

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1.1 Definitions .—

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1.2.36 “meter” means and includes metering equipment or a set of integrated instruments used to measure/record singularly or combined electrical parameters including electrical energy and electrical power both in kWh/kVAh during a given period;

1.2.37 “metering equipment” means set of equipment such as ‘Current Transformer’, ‘Potential/Voltage Transformer’, necessary wiring and accessories etc. deployed in conjunction with the meter to measure/record the amount of electrical energy supplied.
Explanation.- It shall also include any seal or sealing arrangement and other measures provided by the licensee for sealing, reliability and for preventing theft/unauthorised use of electricity;

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4.3 Testing of Meters .—

- 4.3.1 It will be the responsibility of the licensee to satisfy itself regarding the accuracy of a meter before it is installed at the consumer premises.
- 4.3.2 The licensee shall maintain such number of accredited testing laboratories as per the standards prescribed by the National Accreditation Board for Testing and Calibration Laboratories (NABL) as the Commission may require and all such laboratories will at least be equipped with testing equipment as provided in the regulations framed by the Authority under Section 55 of the Act.
- 4.3.3 After testing in the laboratory, the body of the meter will be duly sealed by an officer(s) authorized by the licensee.
- 4.3.4 The licensee may also conduct periodical inspection/testing of the meters installed at the consumer’s premises as per Central Electricity Authority (Installation and Operation of Meters) Regulations , 2006 made under Section 55 of the Act.
- 4.3.5 The Commission may also require the licensee to undertake third party testing of meters/metering equipment installed at the consumers’ premises.

4.4 Defective Meters .—

- 4.4.1 The licensee will check and have the right to test any meter and metering equipment installed at a consumer’s premises if there is a reasonable doubt about its accuracy and the consumer will provide the licensee all necessary assistance in conducting the test. The consumer will have the right to be present during such testing.
- 4.4.2 (a) A consumer may request the licensee to test the meter/metering equipment installed in his premises, if he doubts its accuracy. The licensee will undertake such site testing within seven days on payment of fee as specified in the Schedule of General Charges approved by the Commission.
- (b) If, after testing, the meter is found to be defective then the fee deposited in accordance with sub-para (a) will be refunded by adjustment in the electricity bills for the immediately succeeding months. In case, the meter is found to be correct then the licensee will not refund such fee.

- 4.4.3 *In case a consumer is not satisfied with the site testing of the meter installed in his premises or the meter cannot be tested by the licensee at site then the meter will be removed and packed for testing in the laboratory of the licensee and another duly tested meter will be installed at the premises of such a consumer. In the event the licensee or the consumer apprehends tampering of meter and/or its seals then the licensee and the consumer will jointly seal the packing containing the meter. The seals will be broken and testing undertaken in the laboratory of the licensee in the presence of the consumer, if he so desires.*
- 4.4.4 *In case of testing of a meter, removed from the consumer premises for the purpose of testing in the licensee's laboratory, the consumer would be informed of the date of testing at least seven days in advance. The signature of the consumer, or his authorized representative, if present, would be obtained on the Test Result Sheet and a copy thereof shall be supplied to the consumer.*
- 4.4.5 (a) *Subject to the provisions in sub para (b), in case a meter installed at a consumer's premises gets burnt/ broken/ defective or stops functioning, a new tested meter will be installed within the time lines specified in the schedule to the Himachal Pradesh Electricity Regulatory Commission (Distribution Licensees' Standard of Performance) Regulations, 2005. If the meter gets burnt, broken or damaged due to reasons attributable to the consumer, the licensee will debit the cost of the meter (if provided by the licensee) to the consumer who will also be informed about his liability to bear the cost.*
- (b) *in case of failure of supply due to the burnt, broken, damaged or defective meter, the licensee shall endeavour to restore the supply on the same day by way of installation of new tested meter.*
- 4.4.6 *In case where a meter installed at a consumer's premises is reported to have been stolen and the FIR to this effect has been lodged by the consumer, supply of electricity will be immediately restored by the licensee at consumer's request by installing another tested meter and the cost of the meter shall be recovered from the consumer through electricity bills for the immediate succeeding months.*
- 4.4.7 *In respect of the consumer owned defective/burnt/broken meter, the replacement shall be made by way of a licensee owned meter till such time the consumer provides a new meter duly tested as per para 4.3 and the same is installed as per provisions of this Code.*
- 4.4.8 *4.4.8 Overhauling of consumer accounts -*
- (i) *If a meter on testing is found to be beyond the limits of accuracy as specified in the regulations framed by the Authority under Section 55 of the Act, the electricity charges for all categories of consumers will be computed in accordance with the said test results for a period of six months immediately preceding -*
- (a) *the date of test in case the meter has been tested at site to the satisfaction of the consumer ; or*
- (b) *the date the defective meter is removed for testing in the laboratory of the licensee where such testing is undertaken at the instance of the licensee ; or*
- (c) *the date of receipt of request from the consumer for testing a meter in the laboratory of the licensee.*
- Any evidence provided by the consumer about conditions of working and/or occupancy of the concerned premises during the said period(s) which might have a bearing on computation of electricity consumption will, however, be taken into consideration by the licensee.*
- (ii) *The accounts of a consumer will be overhauled for the period a burnt/defective meter remained at site, on the basis of energy consumption of the corresponding period of the previous year after calibrating for the changes in load, if any. In case the average consumption for the corresponding period of the previous year is not available then the*

consumer will be tentatively billed for the consumption to be assessed in the manner indicated in para 4 of Annexure-A and subsequently adjusted on the basis of actual consumption in the corresponding period of the succeeding year.

- (iii) *If a consumer is liable to pay an additional amount or is entitled for a refund in consequence of an overhaul of his account in accordance with sub- paras 4.4.8 (i) and (ii), the licensee will effect recovery or adjust the excess amount in the electricity bills of the immediately succeeding months.*

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Un-Quote

(15) The Forum now proceeds to determine each issue on merits -

(16) Issue 1: After examining the record, the Forum finds that the impugned monetary demand raised vide Notice dated 02.12.2022 by the Respondent, has not been done under section 126 or under section 135 of the Electricity Act, 2003. The Demand Notice also does not refer to any tampering, though the Meter Reading Instrument (MRI) data sheets (Annexure C3) do refer to Tamper events. It is a known fact that the modern-day meters are capable of recording and storing electricity consumption data, electricity supply parameters including various events related to these. The Forum is also aware that these events and data can be retrieved from the meter using an MRI. On examining the MRI data, it becomes clear that the Tamper event referred to in the MRI data sheets is merely an anomaly event being recorded in the Meter. Thus, the Forum on this very basis concludes that the Complainant is misconceived in assuming that the present matter is of tampering of meter / meter seal broken in the context of unauthorized use of electricity or in the context of dishonest tampering, where the question of removal or broken meter seals may have arisen, but which is certainly not the case herein. It is merely an apprehension of the Complainant. Had the present matter been one of unauthorized use of electricity or a case of dishonest tampering, such would then have appropriately been dealt under the relevant provisions of either Section 126 or Section 135 of the *ibid* Act and the corresponding Regulations framed in this regard, which is not the case here. The Forum concludes that the instant matter is not that of tampering / meter seal broken or one of unauthorized use of electricity or a case of dishonest tampering covered under provisions of either Section 126

or Section 135 of the *ibid* Act. Thus, the Forum rejects the contention raised by the Complainant with regard to Tampering of meter and broken meter seals, as being misplaced, such not being the case in the complaint herein. Issue 1 is decided accordingly.

- (17) Issue 2: After examining the *ibid* Order dated 30.06.2014 passed by the Hon'ble Chhatisgarh High Court, Forum finds that this Order by the Court is in terms of Indian Electricity Act, 1910 which stands repealed vide Section 185 of the new enactment, being the Electricity Act, 2003. The Forum observes that the instant matter is covered under the Electricity Act, 2003 and the Rules, Regulations and Codes framed thereunder. Further, the *ibid* Order of the Hon'ble Court is also distinct from the conditions presented before the Forum in the instant complaint, for the simple reason that in the instant complaint MRI data retrieved from the meter exists as evidence. It is also evident from the *ibid* Order passed by the Hon'ble Court dated 30.06.2014, that the ratio of decision in the Order passed by the Hon'ble Court dated 30.06.2014 is distinct from the conditions presented before the Forum in the instant complaint and therefore Forum is convinced and concludes that the *ibid* Order dated 30.06.2014 passed by the Hon'ble High Court of Chhatisgarh is not squarely applicable in the circumstances arising in the instant complaint. Issue 2 is decided accordingly.
- (18) Issue 3: Before the Forum delves on issue 3, it is expedient and necessary to discuss meter and metering equipment - The Forum finds that in the Supply Code, 'meter' and 'metering equipment' are defined separately but 'meter' is also meant to include metering equipment. Relevant extract of the Supply Code have been reproduced *supra*. Forum is of the considered view that for the purpose of interpretation of Supply Code, meter and metering equipment may be construed as one. However, for practical purposes, Forum is of the considered view that 'meter' and 'metering equipment' are distinct. Metering equipment is in the nature of Instrument Transformers such as Current Transformer (or CT) and/or Potential Transformer (PT). Under practical conditions, when electrical parameter inputs such as voltages and currents to the meter are within safe limits, metering of a consumer may

simply be with a meter and without metering equipment. As has been stated in earlier part of this Order, it is a known fact that the modern-day meters are capable of recording and storing electricity consumption data, electricity supply parameters including various events related to these, which can be retrieved from the meter using an MRI;

- (19) Thus it becomes clear that irrespective of the fact that the meter is with or without recording and storing capabilities and such meter becomes defective, then testing of meter may be the only remedy to estimate or ascertain the quantum of electrical consumption or its accuracy;
- (20) As has already been discussed in para supra, the metering equipment is deployed to give restricted or practically acceptable and safe electrical parameter inputs such as voltage and currents to the meter from an electrical system where these actually exist at excessively high and unsafe levels such as to preclude them from directly inputting into the meter. This is done by stepping down these electrical parameters namely voltages and currents;
- (21) Thus, it further becomes clear that under the condition when metering equipment alone becomes defective and the meter is capable of recording and storing data, then the electricity consumption data and the electricity supply parameters data and events are recorded and stored in the meter, which is available for retrieval using a Meter Reading Instrument (or MRI);
- (22) In view of the above discussion, the Forum holds that while meter may be capable of recording and storing data, metering equipment does not record or store data and therefore for this practical reason the Forum is convinced that meter cannot include metering equipment. While due to defective metering equipment, data of consumption may not be recorded correctly, however, the meter would still have recorded the event of the missing input electrical parameter, thus establishing the fact of defective metering and also depicting the reasons for defective metering which can be retrieved using an MRI. Thus, for this practical reason also, it becomes evident that meter may not include metering equipment;
- (23) On the basis of foregoing discussion, the Forum is convinced that if the metering equipment alone becomes defective, it may not be necessary to

send the meter equipment for Testing to a laboratory for estimating the quantum of unrecorded consumption in the past, unless its accuracy vis-à-vis its accuracy class is either under challenge by the consumer before the distribution licensee or the distribution licensee itself feels the necessity to do so, which is not the case here;

- (24) Thus the MRI data as evidence, is sufficient in helping in estimating or assessing and calculating the quantum of electricity consumption that may have taken place in the past;
- (25) Accordingly, in the instant complaint, the Forum is convinced that because it was the metering equipment which was defective and not the meter therefore, the event of missing phase(s) of voltage, would be reflected in the meter and become available for retrieval using MRI and accordingly the meter would not be required to be sent for testing. Testing of metering equipment would only tend to establish its current status and would not help in estimating the quantum of consumption that may have taken place in the past;
- (26) It is also a known electrical fact that there are three (3) voltage phases for a three phase connection. The Forum is of the considered opinion that when one (1) voltage phase from the metering equipment goes missing, the meter tends to record 66.6% (or $\frac{2}{3}^{\text{rd}}$) of actual consumption and when one (2) voltage phases go missing, the meter tends to record 33.3% (or $\frac{1}{3}^{\text{rd}}$) of actual consumption. The estimation of actual consumption in case of defective metering equipment can thus be done on reasonable considerations;
- (27) Record does not lie. This Forum finds from record that the MRI data sheets (Annexure C3), provided to the Complainant along with the Demand Notice (Annexure C1) also placed on record by the Respondent HPSEBL (Annexure R Colly), do indeed reveal defective metering in terms of missing of phases due to defective metering equipment. The events of defective electrical parameter inputs have been recorded and stored in the meter which have become available by way of the MRI data and which clearly depict that voltage phases were missing. The Forum finds that the Complainant has not challenged the correctness of the ibid MRI data. However, it remains

undisputed that the meter was not sent for testing and that a check meter was installed. On the anvil of foregoing discussion, the Forum concludes that the fact of MRI data is sufficient evidence to establish that the meter was not defective but the metering equipment was defective and therefore for the purpose of estimating the historic consumption, the meter and metering equipment shall not be required to be sent to laboratory for testing;

- (28) Further, on bare perusal of the provisions of code 4.3.1 and 4.4.1 of the Supply Code reproduced supra, it becomes clear that it is within the licensee's rights to test or get tested the meter including metering equipment installed at the consumer premises which the licensee has rightly exercised by not sending the meter and metering equipment for testing;
- (29) Thus, from the foregoing discussion and for the simple reason that the data necessary for determining the reasons of defect had already become available to the Respondent from the MRI itself which is sufficient evidence, the Forum holds and concludes that it was not necessary for the Respondent to send the metering equipment for testing or for testing it at the site. Further, it was within the Respondent's rights to determine the necessity for the testing of the meter which has rightly been exercised by the Respondent. Issue 3 is decided accordingly.
- (30) Issue 4: The fact is evident from record that the Respondent HPSEBL had installed the Check meter and considered the readings / consumption of this 'Check meter' for the period 23.08.2022 to 03.10.2022 (Annexure R Colly) only to confirm the effect of defective metering revealed by the MRI data of 'original meter' and to calculate and assess the percentage of less recording of consumption in original meter vis-à-vis actual consumption by the Complainant which may have taken place. The Forum is of the considered opinion that this fact of defective metering could no better have been discovered by the Respondent by way of any testing had such testing been undertaken;
- (31) On bare perusal of the provisions of code 4.3.1 and 4.4.1 of the Supply Code reproduced supra, it again becomes clear that it is the responsibility of the licensee to satisfy itself with regard to accuracy of the meter. Therefore, the

Forum does not find any fault in the action of the Respondent to install a Check meter. The Forum concludes that the action of the Respondent to install a Check meter cannot thus, be held to be illegal or outside the powers of the Respondent to do so. Issue 4 is decided accordingly.

- (32) Issue 5: The Forum is of the considered opinion that actual energy consumption and its metering are two distinct aspects and these two aspects may not at all times be in consonance and there may be disparity between the two at any time, owing to several reasons such as defective meter, defective metering equipment, defective connections, human error intentional or unintentional etc;
- (33) Therefore, in the instant complaint when it is established by way of evidence of MRI data of original meter, further confirmed by the Check Meter data, that there is defective metering and for the simple reason that electricity / energy has actually been consumed in excess of that recorded in the meter in the past, which could not be billed owing to such remaining unnoticed, it can safely be concluded that consumer Complainant is liable to make good any monetary loss that may have resulted to the Respondent distribution licensee in the past. Non-recording or less recording by a meter cannot be a reason to allow free ride to the consumer Complainant for the consumption of electricity that was actually made by it in the past. Therefore, in the case of defective metering, the consumer Complainant is liable to make payments towards the unrecorded part of consumption estimated on reasonable grounds;
- (34) 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;
- (35) Considering the facts in the instant complaint, depicted by way of MRI data of original meter and the calculations of the Check Meter consumption, this Forum safely concludes that there was defective metering in the past and therefore, the Complainant is liable to pay for the shortfall in billed consumption in the past vis-à-vis actual consumption on reasonable

estimates such as that based on percentage of shortfall established from the Check Meter. Forum finds no force in the arguments made by the Complainant that because sub-code 4.4.8(i) of the Supply Code provides for only six (6) months of overhauling of consumer accounts, therefore consumer account can only be overhauled for 6 months. That is the condition when the meter is tested and when there is no evidence by way of MRI data to confirm the same. This is not the condition here. Regulations cannot be read in isolation. In the instant matter sub-code 4.4.8(ii) and 4.4.8(iii) do provide for overhauling of consumer account for the period the meter remained defective and further that the consumer is liable to pay an additional amount. In view of the foregoing discussion, this Forum holds that dispute raised by the Complainant has not been done on valid grounds;

- (36) From the foregoing considered view of the Forum and given the fact that there was defective metering in the past which is evidenced by the MRI data, the Forum safely concludes that the *ibid* condition of defective metering resulted in non-recording of actual overall consumption of electricity made by the Complainant consumer in the past which could not be recorded then and which the Complainant is now liable to pay for balance of the consumption, on detection of the error / bona-fide mistake by the Respondent HPSEBL. Issue 5 is decided accordingly.
- (37) Issue 6: In view of foregoing position, once it is settled that there was a metering error, as is evident from the MRI data sheets of the original meter placed on record and the results of the Check meter, the only issue remaining to be decided by the Forum, is whether the Respondent can raise monetary demand as arrears of past period for an error or mistake that occurred in the past and whether Complainant consumer of the HPSEBL is or is not liable to make payments towards the *ibid* metering error which existed in the past and which went unnoticed being a bona-fide mistake / error and which was later raised vide Demand Notice dated 02.12.2022 (Annexure C1). Forum observes that the Complainant has not challenged the right of the Respondent to raise past period arrears. However, in order to

settle the matter, it is imperative for the Forum to delve into this aspect as well-

- (38) After examining the record, facts and settled position of law coupled with provisions of the Electricity Act, 2003 on the matter, it is established that the issue of recovery of past dues of arrears by the DISCOM is no more res-integra, 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;
- (39) In the instant matter, the issue of the monetary demand of Rs 29,70,629/= raised vide Demand Notice dated 02.12.2022 (Annexure-C1), for the period October 2014 to October 2022, it is found that the demand has been raised at the behest of a metering error which existed in the past being a bona-fide mistake / error and which was later noticed by the Respondent and a monetary demand against this was raised vide Demand Notice dated 02.12.2022;
- (40) In the ibid Judgment of the Hon'ble Supreme Court dated 18.02.2020, which refers to other Judgments as well, Electricity has 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. It is therefore evident 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 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. These tariffs / charges are applied to the consumption or goods and

thereafter a Bill or monetary demand is raised to the consumer. Thus, 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 HPERC. At the same time, it is also relevant to mention 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 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. These Tariff Orders lay out statutory charges. 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 loss to the distribution licensee being a 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;

- (41) The Forum finds that the Complainant, without substantiating its dispute with facts and proof, is simply denying the alleged defective metering by simply making arguments which this Forum finds as baseless and not legally tenable. The Forum is inclined to agree with the Respondent that the Complainant is construing the provisions of the HP Electricity Supply Code, 2009 in isolation;
- (42) In the matter, this Forum holds that the Respondent HPSEBL did make a bona-fide mistake / error in the past by missing to raise statutory amounts in the original Bill arising out of less recording of meter reading due to metering error, which went unnoticed for some time. The Respondent is certainly within his legal rights to raise past arrears or dues of statutory nature, if not discovered 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 or is hit by limitation of 2 years prescribed in ibid section

56(2), which is conspicuously missing on the part of the Complainant. Issue 6 is decided accordingly;

- (43) On aforesaid terms, the Forum does not find force in the complaint No illegality is seen in the monetary demand raised by the Respondent vide Demand Notice dated 02.12.2022 (Annexure C1);
- (44) Once the issues supra framed by this Forum stand settled, Forum further observes that the Complainant has not raised challenge to the correctness of the overhauled account (Annexure C2) based on the MRI data (Annexure C3 / Annexure R) on which the monetary Demand of Rs 29,70,629/= (Annexure C1) is based. However, after examining the record, the Forum prima-facie observes that the overhauling of Complainant account vide Annexure C2 has not been done correctly and it is also not in conformation with the MRI data, if applied, for the entire period of defective metering from October 2014 to October 2022 --
- (45) Firstly, the Forum from examination of record of MRI data (Annexure R) as evidence, prima-facie finds that the original point of the defective metering has only been established by the Respondent from March 2015. The Forum fails to understand as to how the monetary demand has been raised by the Respondent from October 2014. The Forum is therefore constrained to observe that overhauling of Complainant account done on grounds of voltage phase missing vide Annexure C2 can only be from March 2015 and therefore needs to be corrected. In view of this observed position, the Respondent is directed to accordingly correct the monetary Demand worked out / calculated vide Annexure C2 and further to raise the monetary demand only from March 2015;
- (46) Secondly, from examination of MRI data sheets (Annexure R), placed on record as evidence, the Forum prima-facie also finds that during the period from March 2015 to March 2022, against the condition of one phase or two phases of voltage missing, there is actually some voltage being recorded against the missing phase or phases. Though this missing phase voltage may be negligible or small in comparison to the non-missing phase(s), this has to be accounted. Under this condition of some voltage existing against missing

phases(s), some consumption is deemed recorded and to this extent, the Complainant cannot be charged. From examination of the overhauled account (Annexure C2), the Forum observes that this condition has been completely ignored by the Respondent. The Forum on this count too, is constrained to observe that the overhauling of account of Complainant from March 2015 to March 2022, has not been done correctly and accordingly this needs to be corrected. In view of this observed position also, the Respondent is directed to correct the monetary Demand worked out / calculated vide Annexure C2 and to further raise the monetary demand for the estimated consumption from March 2015 to March 2022 considering therein also the voltage against the missing phase(s);

- (47) This Forum further observes that in majority of complaints, as also observed in this instant complaint, issues of past arrears as monetary demands by the HPSEBL are raised by the complainants in general. These arrears may account for huge multiples of the running bills of the consumer. Such demands of past period arrears may impose hardships upon the consumers on their inability to pay such huge amounts along with the running bills in one go. In this regard, the Forum advises that the Respondent HPSEBL may evolve a suitable mechanism after seeking approval of the HPERC, for mitigating the plight of consumers, who may be oblivious of such huge amounts of arrears accruing or piling against them due to some bona-fide error on the part of the distribution licensee. However, till such time any suitable mechanism is evolved, the Respondent HPSEBL may consider charging an equivalent amount or any multiple of monthly running electricity bill as installment of arrear in the bill of the Complainant, till such time the total amount of past period arrears are not received. This mechanism can then also justify electricity disconnection for non-payment of electricity bill under section 56 of the Electricity Act, 2003 while also avoiding unnecessary litigation and at the same time mitigating the plight of consumers;
- (48) For reasons as explained foregoing, Respondent is directed to correctly overhaul the account of the Complainant based on the MRI data for the

period of defective metering, by recalculating the amount as directed in paras supra. Thereafter, the Respondent is directed to raise a revised Demand Notice along with revised calculation sheet of overhauled account to the Complainant within a period of 10 days from this Order, which the Complainant shall pay within a period of one (1) month from the date of this revised Demand Notice or in accordance with the terms of instalment, as may be allowed by the Respondent;

On aforesaid terms, the monetary Demand raised by the Respondent vide Notice dated 02.12.2022 (Annexure C1) for Rs 29,70,629/= is partially allowed to the extent as directed in paras supra.

The complaint is disposed accordingly;

Parties are left to bear their own costs.

Order is announced before the parties present today on 29.03.2023 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: 29.03.2023

Shimla

Sd/-

**Vikas Gupta
(Member)**

Sd/-

**Tushar Gupta
(Chairperson)**

Notice

CONSUMERS GRIEVANCES REDRESSAL FORUM AT KASUMPTI SHIMLA-171009.
No.CGRF/Complaint No. 1413/4/22/36

Registered

Dated:-

M/s Kusum Gupta & Associates, Through
Sh. Chander Prakash Gupta,
S/o Sh. Murari Lal Gupta,
O/o Vill. Nagli, Oachhghat,
Tehsil& Distt. Solan (HP).

Complainant

V/s.

HPSEBL & Others.

Respondents

Complaint No. 1413/4/22/36

1. The Executive Director (Pers.),
HPSEBL, Vidyut Bhawan,
Shimla-171004.
2. The Executive Engineer,
Electrical Division, HPSEBL,
Solan, Distt. Solan (HP).
3. Assistant Engineer,
Electrical Sub-Division No.3,
HPSEBL, Solan,
District Solan (H.P.)

Respondents

The Certified copy of final order dated 29.03.2023, passed by the Hon'ble Forum in the aforesaid complaint is enclosed herewith for further necessary action at your end please.

---Sd/-

DA:-As above.

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