

CONSUMER GRIEVANCES REDRESSAL FORUM, SHIMLA

Complaint No 3334/202311/34

M/s A&A Cement Company

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 M/s A&A Cement Company, Industrial Area Jeetpur Bheri Tehsil Ghanari, District Una, Amb Una HP, 174303;
- (2) Complainant is a Large Industrial Power Supply (LIPS) Consumer of Respondent HPSEBL, bearing Consumer ID 100012000216 and Respondent Himachal Pradesh State Electricity Board Ltd (or the HPSEBL) is the distribution licensee;
- (3) Complainant is aggrieved by the act of the Respondent to issue demand Notice to the Complainant on 23.05.2022 (**Annexure C1 / Annexure R- 4B**) at the behest of Internal Audit for the payment of energy bills amounting to Rs 14,32,879/= and for permanent disconnection of electricity connection. As per the Respondent, demand Notice was also issued by it on 17.03.2022 (**Annexure R- 4A**). On non-payment, the Respondent further adjusted Security Deposit of Rs 3 lacs deposited with it by the Complainant and later after permanently disconnecting the Complainant on 22.07.2022, issued another Notice to Complainant on 24.11.2022 (**Annexure C2**), for depositing the outstanding amount of Rs 11,99,664/=;
- (4) Accordingly, the Complainant has impugned the ibid Demand Notice dated 24.11.2022 (**Annexure C2**) raised by the Respondent for the outstanding amount of Rs 11,99,664/=.

COMPLAINANT–

- (5) That it had made oral request to the Respondent Board to reconnect it's electricity connection and for one time settlement (OTS) but no action has been taken by the Respondents;
- (6) That it had made Representation on 30.10.2023 (**Annexure C3**) to the Chairman of this Forum for waiver of interest and penalty imposed by the Respondent and for One Time Settlement (OTS) or instalments, which has not been decided;
- (7) That the action of disconnection by the Respondent is against procedure laid down in law which is liable to be set aside and that amount of Rs 11,99,664/= raised by way of the impugned Demand Notice dated 24.11.2022 (**Annexure C2**) is not payable by the Complainant and that the Complainant is not liable to pay such heavy amount and that the Complainant is ready to pay the energy bill without interest and penalty;
- (8) In its Rejoinder, the Complainant inter-alia, has raised contention that the monetary demand raised by the Complainant is against the provisions of code 7.1.2 of the HP Electricity Supply Code, 2009, wherein the demand charges for the period of Temporary disconnection (or TDCO) have to be levied at the rate of 10%, of Contract Demand, whereas these have been levied at the rate of 90%;
- (9) Complainant has prayed for quashing and setting aside Demand Notice dated 24.11.2022 (**Annexure C2**) and for refund of Security Deposit of Rs 3 lakh deposited with the Respondent and for restoration of electricity supply and for deciding the Representation (**Annexure C3**).

RESPONDENT–

- (10) That the Respondent HPSEBL is acting as per Act and Rules framed thereunder and that the Complainant is well aware of these being a consumer of electricity and that as per Agreement executed between parties, the Complainant is liable to pay dues/ charges as per Tariff, Rules and Regulations. The Complainant has no locus-standi to file the complaint and is estopped to file the complaint due to its own acts and conduct and same is liable to be dismissed;
- (11) That as per Regulations, electricity supply of Complainant was temporarily disconnected (TDCO) for the period 01.04.2019 to 01.10.2019 (Six months). Thereafter the Complainant did not apply for re-connection. The Complainant remained connected till 01.11.2021 at 10% demand charges when also the Complainant did not apply for re-connection;
- (12) That on 08.07.2021 and 17.07.2021 (**Annexure R- 2A & 2B**), the Respondent wrote letters to the Complainant for reconnection of its supply and then permanently disconnected the Complainant on 22.07.2022;
- (13) That electricity connection remained temporarily connected w.e.f 1.10.2019 to 1.11.2021 with only 10% demand charges which otherwise was allowed only for six months and because Complainant did not apply for reconnection which is against Regulations and total amount worked out by Audit for Rs 11,25,000/= (**Annexure R1**) and that the whole amount is payable by the Complainant
- (14) That there is no provision for One Time Settlement (OTS) or for the waiver of interest and penalty;
- (15) That the Security Deposit lying with the Respondents has been adjusted towards the due amount;

- (16) That the Complainant is liable to pay the whole amount and the HPSEBL being a distribution has every right to take recourse for recovering the due amount as provided in the Electricity Act read with the Supply Code and that the Complainant has not come before this Forum with clean hands;
- (17) Citing above reasons and law laid down by the Hon'ble Apex Court in CA No 1672 of 2020 arising out of SLP(Civil) 5190 of 2019 r/w Civil Appeal 7235 of 2009 decided on 05.10.2021, the Respondent has prayed that the complaint be dismissed.

ORDER

- (18) Before the Forum proceeds to determine the instant complaint, it wishes to acknowledge and appreciate on record the role of Sh Kamlesh Saklani, Under Secretary (Law) of the Respondent, in assisting the Forum in separating grain from chaff and thus effectively settling the matter;
- (19) The Forum now proceeds to determine the instant complaint;
- (20) This Forum has examined the relevant provisions of the Electricity Act, 2003, various relevant Regulations framed and notified by the HP Electricity Regulatory Commission (or the HPERC) including relevant provisions of HPERC (Consumer Grievances Redressal Forum and Ombudsman) Regulations, 2013, HP Electricity Supply Code, 2009 and amendments thereto, relevant provisions of HPSEBL Sales Manual 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;
- (21) At the outset, the Forum is seized of the Complainants allegation of oral requests to the Respondents for the reconnection of its electricity connection and for one time settlement (OTS) and also

to a letter to the Forum (**Annexure C3**), wherein the Complainant has alleged non-redressal of the same by the Forum. The Forum, before it proceeds to frame the relevant Issues arising from the instant complaint, is inclined to dwell upon these allegations first -

- (22) In respect of the allegation on the Respondent by the Complainant, Forum finds that the Complainant has not placed anything on record or any evidence whatsoever to support its claim. Forum fails to understand as to what had stopped the Complainant from making a written reference for its re-connection and for one-time-settlement (OTS) during all the time it remained disconnected. The Forum rejects the allegations made by the Complainant as being unsupported and an afterthought;
- (23) Further, in respect of **Annexure C3** placed on record by the Complainant, which the Forum is unable to confirm, Forum fails to understand that when the Complainant was always at liberty to approach this Forum with a proper complaint in accordance with the *ibid* HPERC (Consumer Grievances Redressal Forum and Ombudsman) Regulations, 2013, duly supported with documents, then as to what had stopped it from doing so during all the time, which was eventually done by it by way of the instant complaint. It cannot be expected of this Forum to decide a matter in isolation of facts or with concealed facts or to extend advantages being desired by the Complainant based upon the Complainant's whims and fancies. The Forum being a body of quasi-judicial nature cannot attend to unreasonable, unsupported or unconfirmed claims raised by the consumer / Complainant. The Complainant is a Large Industrial consumer and it is expected of it to be well conversant with the existing laws including the Regulations framed by the HPERC. It cannot be expected of the Large Industrial Supply Complainant to not be aware of or to be ignorant of the extant law

including the ibid Regulations, 2013 under which the instant complaint was eventually filed. On this count alone Forum rejects the allegations made by the Complainant which in opinion of Forum are clearly an after-thought.

- (24) The Forum now proceeds to frame issues arising from the complaint -
- (25) **Issue No-1:** Whether the Interpretation on Temporary Disconnection rendered by the Internal Audit in its observation (**Annexure R1**) is correct and further whether the Respondent is correct in raising impugned Demand Notice dated 24.11.2022 (**Annexure C2**) for Rs 11,99,664/= (Also raised vide demand Notice dated 17.03.2022 (**Annexure R- 4A**) and 23.05.2022 (**Annexure C1 / Annexure R- 4B**)) which have been raised at the behest of Audit (**Annexure R1**) for the period of Temporary disconnection of the Complainant?;
- (26) **Issue No-2:** Whether as per the contention of the Complainant, the Respondent distribution licensee HPSEBL is is wrong, arbitrary and not legally justified in permanently disconnecting the Complainant on 22.07.2022 after its temporary dis-connection on 01.04.2019?.
- (27) The Forum now proceeds to delve upon each of the above Issues framed by it -
- (28) **Issue No-1:** Forum from record finds that the dispute in complaint has arisen only after the Internal Audit observation (**Annexure R1**) was made based upon the provisions of HPSEBL Sales Manual. After examining the HPSEBL Sales Manual and the HP Electricity Supply Code, 2009 and amendments thereto, it becomes clear to the Forum that whereas the HPSEBL Sales Manual is an internal procedural document of the Respondent, the ibid Supply Code has been framed by the HP Electricity Regulatory Commission (or the

HPERC) under the Electricity Act, 2003. Thus, the Sales Manual serves as a standardized guide to the operational units of the HPSEBL. However, it is the Supply Code which has statutory force. Though the provisions of the Sales Manual and the Supply Code are similar, the former having been based upon the later, the Forum hereinafter shall solely rely on the provisions of the Supply Code to decide the instant matter;

(29) It is observed by the Forum that the main complaint which is against the demand notices raised by the Respondent can squarely be decided once it is determined whether the Audit observation (**Annexure R1**) is correct or wrong. The Audit observation is based on the proposition that the Temporary disconnection has to be allowed to consumer only for 6 months and for these 6 months it will be charged 10% of sanctioned contract demand and if consumer does not apply for reconnection then it is to be permanently disconnected otherwise consumer will be liable to pay full charges. The Audit has accordingly gone ahead and created a monetary demand upon the Complainant;

(30) After examining the HP Electricity Supply Code, 2009 and amendments thereto, the Forum is unable to find support for the *ibid* interpretation rendered by the Audit. The Supply Code in 3rd proviso to the said code 7.1.2, inserted vide first amendment of year 2014 merely states as follows :-

“Provided further that in respect of the period during which the supply remains disconnected temporarily for any of the aforementioned reasons, the demand charges as per the tariff order shall be charged only for 10% of the total sanctioned contract demand. In case the defaulting consumer permanently surrenders a part of his sanctioned contract demand during this period, the demand charges shall be levied for 10% of the balance contract demand.”

(31) It thus becomes clear to the Forum that for the period the consumer remains under Temporary disconnection, it shall be charged only for 10% of the total sanctioned contract demand. Nowhere is it said

or presumed in the Code that if the consumer continues under Temporary disconnection beyond 6 months, for whatever reason, then the consumer will be charged demand charges in full. Leading para of Code 7.1.2 merely says that if the default in payment(s) is continued for a period of 6 months then the supply may be disconnected permanently. It is not the case of the Respondent that the Temporary disconnection of the Complainant may have originally been done by it for default in payment by the Complainant. Thus, the Forum holds that the Audit has based its observation on a faulty premise. The observation (**Annexure R1**) raised by the internal audit is accordingly set aside;

- (32) During the hearing in the matter, the Counsel for Complainant emphasized upon the code 7.1.2 of the HP Electricity Supply Code, 2009, wherein the demand charges for the period of Temporary disconnection (or TDCO) have to be levied at the rate of 10% of Contract Demand, whereas these have been levied in full;
- (33) Forum from its findings on the ibid 3rd proviso to the said code 7.1.2, inserted vide first amendment of year 2014, and the Audit observations which have been set aside in para supra, holds that for the period of Temporary disconnection (TDCO) the demand charges have to be levied @ 10% and thus there is certainly a legal basis for the contention as raised by the Complainant;
- (34) From record and from the Audit observation, Forum finds that the Respondent was originally levying the demand charges @10% of the Contract Demand which was later modified at the instance of the wrong Audit observation which has now been set aside in paras supra;
- (35) In the instant matter, the underlying fact remains that the impugned monetary demand has been raised in full and not @ 10% of the sanctioned contract demand by the Respondent HPSEBL, for the

period the Complainant remained under Temporary disconnection and this is against the provisions of the Supply Code. In view of foregoing, the Forum holds without any doubt that any monetary demand raised by the Respondent for the period the Complainant remained under Temporary disconnection, for whatever reason, is leviable at the rate of 10% of the Contract Demand and not in full;

- (36) In the instant matter, the Respondent HPSEBL has issued Demand Notices to the Complainant on 17.03.2022 (**Annexure R-4A**) and on 23.05.2022 (**Annexure C1 / R-4B**) and on 24.11.2022 (**Annexure C2**) which was included as sundry in Bill dated 07.09.2022 (**Annexure R-3**) based upon the Audit observation which is in terms of full demand charges and not @ 10% of the sanctioned contract demand;
- (37) In view of foregoing discussions, the Forum concludes on facts and on the basis of code 7.1.2 of HP Electricity Supply Code, 2009, that the ibid Demand Notices raised by the Respondent based on a faulty premise by the Audit are not sustainable and are accordingly set aside. The Respondent was originally correct in charging the Complainant @10% of the sanctioned contract demand for the period the Complainant was temporarily disconnected. **Issue No-1** is accordingly decided in favor of the Complainant and against the Respondent.
- (38) **Issue No-2:** The Forum now proceeds to delve on the 2nd issue of contention raised by the Complainant that the Respondent distribution licensee HPSEBL is wrong, arbitrary and not legally justified in permanently disconnecting the Complainant on 22.07.2022 after its temporary dis-connection on 01.04.2019 –
- (39) Forum observes from provisions of Supply Code that disconnections can be of the nature of temporary or permanent. Forum also observes that the Complainant has not raised any

challenge whatsoever to the Temporary disconnection done by the Respondent on 01.04.2019. In its complaint, the Complainant has also not shown as to how is the Respondent distribution licensee not legally justified in permanently disconnecting the Complainant after it remained under temporary disconnection for some time especially when the Respondent on a number of occasions had vide Notices dated 08.07.2021 and 17.07.2021 (**Annexure R2-A & B**) asked the Complainant to get its electricity Supply reconnected. The Complainant has merely and flatly stated that the action of the Respondent to permanently disconnect it, is wrong, illegal and arbitrary;

- (40) The Forum observes that Complainant has clearly not set up any legal basis in its complaint to dispute the actions of the Respondent to first disconnect it on temporary basis on 01.04.2019 and then on permanent basis on 22.07.2022. It is apparent from the complaint that the Complainant at the time of its Temporary disconnection, for whatever reasons best known to the Complainant, was not paying heed to the ibid Notices issued to it by the Respondent on 08.07.2021 and 17.07.2021 and 23.05.2022, and had awoken only after the Notice dated 24.11.2022 (**Annexure C2 / Annexure R-4B**) was raised upon it;
- (41) From perusal of code 7.1.8 of the HP Electricity Supply Code, 2009, Forum finds that disconnection can be of two types - Temporary disconnection and Permanent disconnection and the distinction between the two lies in the fact that in case of permanent disconnection the distribution licensee is also empowered to remove service line, meter etc which otherwise may have existed at the time of Temporary disconnection and that in case of permanent disconnection, in accordance with 1st Proviso to Code 7.2.1, reconnection is to be treated like a new connection

implying thereby that reconnection after the permanent disconnection shall be possible only after completion of necessary codal formalities as required by the Regulations / Code notified by the Commission;

- (42) Record does not show that the Complainant may have ever objected to the Temporary disconnection. If it is the case of the Complainant that permanent disconnection after the period of Temporary disconnection by the Respondent cannot be done, then the Complainant is wrong and misplaced. The *ibid* Supply Code, 2009 Regulations and amendments thereto without doubt empower the Respondent distribution licensee to take action on disconnections as may be necessitated;
- (43) The Forum after perusal of the *ibid* Code / Regulation does not find any illegality in the permanent disconnection of the Complainant on 22.07.2022 done by the Respondent distribution licensee subsequent to the Temporary disconnection and accordingly rejects the contention of the Complainant that the disconnection is wrong, illegal and arbitrary. The Forum holds that the Respondent distribution licensee HPSEBL is certainly justified and within its rights to permanently disconnect the Complainant on 22.07.2022 after its long period of Temporary dis-connection. The action of the Respondent is certainly not outside the scope of provisions of the *ibid* Electricity Supply Code, 2009, by way of which it is empowered to do so. **Issue No-2** is accordingly decided against the Complainant and in favor of the Respondent HPSEBL;
- (44) In view of foregoing discussion and decisions by the Forum-
- (45) The Respondent is directed to adjust in the future bill of the Complainant any excess payment that may have been paid by the Complainant and received by it for the period of Complainant's

temporary disconnection and up to the time of the permanent disconnection of the Complainant i.e up to 22.07.2022;

- (46) Pursuant to the Interim Orders passed by the Forum on 05.12.2023 and 29.12.2023, if the codal formalities for the restoration of electricity supply / electricity connection have not been completed by the Complainant, then the Complainant is directed to complete these within a period of 30 days from this Order. Consequently, any monies payable by the Complainant for restoration of its connection, after its permanent disconnection, shall be recovered by the Respondent. Further, in accordance with the HPERC Security Deposit Regulations, any shortfall in Security Deposit shall be payable by the Complainant or any excess Security Deposit with the Respondent shall be refundable to the Complainant;

On aforesaid terms, the complaint is **Partly Allowed** and disposed of.

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--
Anil Sharma
(Member)

--Sd--
Tushar Gupta
(Chairperson)

**CONSUMERS GRIEVANCES REDRESSAL FORUM AT KASUMPTI,
SHIMLA**

Complaint No.: - 3334/202311 /34

Date of Admission:- 28.11.2023

**Quorum: - Er. Tushar Gupta, Chairman
Sh. Anil Kumar Sharma Member**

In ref:-

M/s A&A Cement Company
Industrial Area Jeetpur Bheri
Tehsil Ghanari Distt. Una
PIN 174303

Complainant

V/s.

HPSEBL & Others.

Respondents

1. The Executive Director (Pers.),
HPSEBL, Vidyut Bhawan,
Shimla-171004.
2. The Assistant Engineer,
Electrical Sub-Division
HPSEBL, Bharwain,
District Una 174303 (H.P.)

Respondents

Final hearing:- 24.09.2024.

Counsels:-

Complainant 1. Miss. Narvada Kashyap, Advocate

Respondent 1. Sh. Rajesh Kashyap, Advocate
2. Sh. Kamlesh Saklani, Under Secretary Law.
3. Sh. Kiran Bhatt, JOA
4. Er. Ratik Sharma (J.E.)

Date of Decision: -30.09.2024.

Notice

Registered

CONSUMERS GRIEVANCES REDRESSAL FORUM AT KASUMPTI SHIMLA-171009.

No. CGRF/Complaint No. 3334/202311/34

Dated:-

M/s A&A Cement Company
Industrial Area Jeetpur Bheri
Tehsil Ghanari Distt. Una
PIN 174303 (HP).

Complainant

V/s.

HPSEBL & Others.

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HPSEBL, Vidyut Bhawan,
Shimla-171004.
2. The Assistant Engineer,
Electrical Sub-Division
HPSEBL, Bharwain,
District Una 174303 (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.