CONSUMERS GRIEVANCES REDRESSAL FORUM AT KASUMPTI, SHIMLA-9
No. CGRF/Complaint No. 1422/3/20/018 Dated:-

Complaint No.: -	**1422/3/20/018**
Date of Admission: -	**14.07.2020**
Quorum: -	**Dr. M.G. Sharma, Chairman.**
	Er. Vikas Gupta, Member.
	Sh. K.S Dhaulta, Member.

M/s Tashkent Stone Crusher,
Village Naraini, Tehsil Kasauli,
District Solan (HP).

Complainant

V/s.

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

2. Sr. Executive Engineer,
Electrical Division, HPSEBL,
Solan, Distt. Solan (HP).

3. Assistant Executive Engineer,
Electrical Sub-Division HPSEBL,
Dharampur, Distt. Solan(HP).

Respondents

Final hearing:- **17.11.2021**

<u>Present for:-</u>

Complainant
1. Sh. Bhagwan Dass, Advocate

Respondent
1. Sh. Anil Kumar God Advocate
2. Sh. Kamlesh Saklani Law officer
3. Er. Rahul Verma, Sr. XEN Parwanoo

Date of Decision: - **20.11.2021**

ORDER

1. The instant complaint has been filed against the alleged wrong, illegal and arbitrary demand raised in terms of demand notice dated 08/07/2020 for Rs. 2,49,969/- on account of alleged overhauling of account of the complainant. The factual matrix of the complaint is that Complainant Company has account No. 100012000748 (5000698874) and is a consumer who had earlier entered into a contract demand of 125KVA with the Respondent Board. The complainant had subsequently applied for permanent reduction of its 125 KVA demand to 95KVA in September/2019. It is alleged by the complainant that the said reduction was not acceded to by the Respondents and the demand charges were raised in the monthly energy bills based on 125KVA demand. The reduction of contract demand was considered w.e.f. 1st Novermber, 2019 and the demand charges were raised in the subsequent monthly energy bills based upon 95KVA contract demand.

2. The complainant alleges that in terms of communication dated 24/04/2020, the Respondents created a demand of Rs.3,68,330/- to be deposited at earliest as is evident from **AnnexureC-1.** The Respondents subsequently issued another notice dated 06.07.2020 **Annexure C-2** for Rs.2,98,780/-. The said demand was to be paid by consumer within 15 days and in case of failure the disconnection of electricity supply to be made against the consumer. Again on 08.07.2020 the present notice **Annexure C-3** was issued to the complainant to pay an amount of 2,49,969/- being outstanding as on 03.07.2020 against the account of the complainant. The complainant stated to have responded to the **Annexure C-3** through email placed on record as **Annexure C-4** stated therein that the alleged demand is wrong, illegal arbitrary and not payable by the complainant. The demand notice dated 08.07.2020 **Annexure C-3** is alleged to be related to the period December/2015 to April/2020 which has become time barred under section 56(2) of Electricity Act 2003.

3. The complainant has made the prayer to seek relief to the following effects:-

a) An order declaring the demand of Rs.2,49,969/- raised through demand notice dated 08.07.2020 as wrong, illegal, arbitrary, unsustainable, not payable and unrecoverable in terms of provisions of Section 56(2) of the Electricity Act.2003.

b) An order directing the respondents not disconnect the electricity supply of the complainant consumer as has been threatened in demand notice dated 08.07.2020.

c) Any other directions or order as this Hon'ble Forum deems fit and proper under the facts and circumstanced of the case may also be granted in favour of the complainant consumer and against the respondents, the interest of justice.

4. The Respondents filed their reply contesting the claim of the Complainant. The Respondents in its reply submit the facts that the complainant is a habitual defaulter since December/2015 and making part payment of electricity consumption charges raised by the Board as is evident from calculation sheet **Annexure-1.** The complainant is thus stopped to file the present complaint by her own acts and conduct being habitual defaulter and as such liable to pay late payment surcharge on the outstanding amount of the energy bills. The Respondent Board further submitted that the present complaint has been filed on twisted and distorted facts which are far from reality. In September/2019 the complainant had applied for reduction of contract demand **Annexure A-2** but in order to process the case for reduction of contract demand, the complainant was to submit revised A&A form along with the processing fees as per Sales Manual Instruction No.18 (Annexure -3), the Board alleges that in the instant case the complainant failed to deposit the requisite processing fee and the same have been deposited by the complainant on 23.04.2020 Annexure -4. Thus the delay in the reduction of contract demand is directly attributable to the complainant.

5. The Respondent Board in its reply opposed the contention of the complainant being time barred. The Board in its reply relied upon the **Hon'ble Supreme Court of India Judgement passed in Civil Appeal no. 1672 of 2020 decided on February 18 2020** whereby the Hon'ble Supreme Court on India has clearly held that in the case of mistake or bonofide error, it did not preclude the licensee company from raising an additional or supplementary demand after the expiry of limitation period Under Sanction 56(2). It did not, however, empower the licensee company to take recourse to the coercive measure of disconnection of electricity supply. The Board has also relied on the judgment passed by the Hon'ble Court in Mahabir Kishore and

Others V/s State of Madhya Pradesh 5 (1989) 4 SCC1. As such the demand of the Respondent Board is not hit by the provisions of section 56(2) of the Act. 2003.

6. The Respondent Board in its reply submitted that the actual overhauling was done to the satisfaction of the consumer and it was found that the energy bills amounting to Rs.3,68,330/- was pending on 04/2020 which has now accumulated to Rs.2,49,269/- after details of payment made by the petitioner **Annexure-10** from January/2020 to July 2020. The Respondent Board further contended that the bills for the period 2015 to 2020 showing arrears of electricity charges as outstanding **Annexure-11** and liable to be paid by the complainant.

7. The complainant filed the rejoinder and also the additional submissions along with detailed written arguments pointing out the discrepancies in the submissions made by the Board. The parties were afforded due opportunity to reconcile and settle the discrepancies, if any, on their request during the course of hearing. The complainant was specifically asked to pin point the discrepancies in the sheet of outstanding charges prepared by the Board on the direction of the Forum placed on record as **Annexure RA-1A**. However, the parties failed to reach any amicable settlement during the course of hearing and the arguments were adduced by the parties on merits, facts, record, law and provisions of the Supply Code, 2009 and the relevant regulations etc. on the matter.

8. The parties finally argued the matter on merits on 17.11.2021 and prayed to dispose of the complaint on merit accordingly. We have heard both the Parties and examined the relevant record, Regulations Supply Code and case laws etc., placed on record by the parties during course of hearing. The facts on record and pleadings of the parties clearly establish that the controversy mainly pertains to the demand raised by the Respondent HPSEBL,vide **Annexure C-3** and the same has allegedly being stated to be wrongly charged.

9. The contention of the complainant that the demand raised through demand notice dated 08.07.2020 **Annexure C-3** for Rs.2,49,969/- is hopelessly time barred under section 56(2) of the Electricity Act. 2003 as the alleged outstanding amount raised in bi-monthly bills pertains to December/2015 onwards till July/2018 which is unrecoverable and hopelessly time barred. We do not find any force in the contention

of the complainant in view of the facts on record and the settled position of law on the issue of time barred demand and of limitation Under Section 56(2), of the Electricity Act,2003. It has been laid down by the **Hon'ble Supreme Court of India in Judgement passed in Civil Appeal no. 1672 of 2020 decided on 18.02.2020,** that in the case of mistake or bonofide error, it did not preclude the licensee company from raising an additional or supplementary demand after the expiry of limitation period Under Sanction 56(2) of Electricity Act,2003. It was further held that it did not, however, empower the licensee company to take recourse to the coercive measure of disconnection of electricity supply.

10. The Hon'ble Supreme Court in para 9 of the said judgement has clearly held that ***"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) had by then already expired".*** The present case in hand, has also the similar facts i.e. the demand stated to be of the period December/2015 to April/2020 which was discovered by RAO audit, and has been raised subsequently as additional demand vide notice dated 08.07.2020 Annexure C-3.

11. Thus, by applying the ratio of the above referred judgement to the present case it is easily concluded that the case of the complainant is squarely covered by the above judgment and hence not hit by section 56(2) of the Electricity Act.2003 as contended by the complainant. The demand so raised vide **Annexure C-3** is not barred by limitation. The Board has also relied on the judgement passed by the Hon'ble Court in Mahabir Kishore and Others V/s State of Madhya Pradesh 5 (1989) 4 SCC1. As such the demand of the Respondent Board is not hit by the provisions of section 56(2) of the Act. 2003. We find force in the arguments of the Respondent Board on the issue of limitation and time barred demand and the contentions raised by the complainant on the issue are untenable in view of the settled position of law on the matter.

12. After examination of the record and the detailed submissions made by the parties along with their calculation sheets, the Forum is of this considered view that both the

parties have failed to reach to an amicable settlement despite affording them opportunity to do so on their requests. The facts on record also establish that there are apparent lapses on the part of both the parties. It is undeniable fact that the complainant has made payment of energy bills in part since December/2015 onwards and on the other hand the Respondent Board has also failed to ensure to raise energy bills to the complainant on monthly basis regularly. It is also established from record and pleadings of the parties that the Respondent Board had raised demands intermittently which were disputed by the complainant. The complainant has also failed to ensure that in case the energy bills are not raised regularly than the Respondent Board are to be approached timely to raise such energy bills to avoid any delay in payments and charging of surcharge etc., thereon.

13. The complainant in its written submission pointing out discrepancies as calculated on the calculation sheet **1-F** attached with the written submissions. It has pointed out the wrong surcharge to be waived of from bills of consumer from December/2015 to August/2021. The calculation sheet of the complainant has depicted an amount of Rs.2,17,184/- to be waived of, as surcharge from the year 2017 to 2020.

14. The Respondent Board did not agree to the calculations made by the complainant and denied it. However, the Board failed to specify as to how it has reached to a demand of Rs.3,68,330/- as calculated in the **Annexure-RA-1/A** submitted with its reply. This amount is shown as actual outstanding in SAP in April/2020 whereas the energy bills placed on record for July/2020 **Annexure –C.J.** by the complainant along with additional submissions, clearly shows the total amount payable does not tally with the actual demand raised. Thus, we find force in the arguments of the complainant that she was not issued the correct bills timely since December/2015. The payments made by the complainant were not adjusted timely and was computed with heavy surcharges and the incorrect outstanding amount was brought forward.

15. We have also examined the correspondence made on the issue by the parties at different point of time to resolve the same. The Respondent Board in its arguments and calculation sheet stated that it has given the benefit/rebate of Rs.1,17,039/- after overhauling the account and had adjusted the part payments made by the complainant through RTGS etc.

16. We have observed and as ascertained from record that the Respondents have overhauled the entire account of the complainant for the period of December/2015 to April/2020. This fact also has been admitted in rejoinder by the complainant, that the rebate amounting to Rs.1,17,039/- has been worked out by the Respondent Board and the same has been allowed in terms of sundry item numbers 1454 dated 20.04.2020 vide calculation sheet **Annexure RA-1**. Now the demand of Rs.2,49,969/- raised by the Respondent Board vide notice dated 08.07.2020 is to be scrutinised.

17. On scrutiny/examination of record relating to impugned demand **Annexure C-3**, the factum of overhauling of the complainant account for the period December/2015 to April/2020 is an admitted fact and a rebate of Rs.1,17,039/- has been allowed in the monthly energy bills dated 19.05.2020. However, complainant has argued/submitted in details that the bills have not been served for a long span of time to them hence not liable to pay the surcharges for that period. Now in the facts and circumstances and as per record, it is neither justified nor tenable on behalf of the Respondent Board to demand an amount of Rs.2,49,969/- vide notice **Annexure C-3** dated 08.07.2020. It is apparent from the record that the Respondent Board has erred in raising the demand **Annexure C-3.** The surcharge calculated in the said demand of Rs.2,49,969/- **Annexure C-3** required to be waived of, in view of the failure and apparent lapses on the part of Respondent Board to provide timely monthly energy bills and is to be recalculated to issue the revised demand for the same.

18. In view of the discussions made herein above, the present complaint is partly allowed and the demand notice dated 08.07.2020 **Annexure C-3** raised against the complainant for Rs.2,49,969/- is quashed and set-aside. The Respondent Board is directed to recalculate the demand for the said period excluding the unnecessary surcharges on the balance energy bills within a period of two months from the date of this order and the rebate, so calculated shall be adjusted in the future energy bills of the complainant. In the aforesaid terms the present complaint is disposed of.

19. The parties are left to bear their own costs. The order reserved on 17.11.2021 is released on 20.11.2021 in open court at Shimla.

20. The Case File be consigned to record room after due completion. A copy of the order be kept in safe custody of folder of orders. The certified copy of these orders be supplied to both the parties.

Dated:-20.11.2021

Place:- Shimla

Sd/-	Sd/-	Sd/-
(K.S. Dhaulta) **(Member)**	**(Vikas Gupta)** **(Member)**	**(M.G. Sharma)** **(Chairman)**

Notice

Registered

CONSUMERS GRIEVANCES REDRESSAL FORUM AT KASUMPTI SHIMLA-171009.

No.CGRF/Complaint No. 1422/3/20/018 **Dated:-**

M/s Tashkent Stone Crusher,
Village Naraini, Tehsil Kasauli,
District Solan (HP).

Complainant

V/s.

HPSEBL & Others. **Respondents**

Complaint No. 1422/3/20/018

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

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Electrical Division, HPSEBL,
Solan, Distt. Solan (HP).

3. Assistant Executive Engineer,
Electrical Sub-Division HPSEBL,
Dharampur, Distt. Solan(HP). **Respondents**

The Certified copy of final order dated 20.11.2021 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.