ORDER

BRIEF FACTS OF THE CASE –

(1) Complaint has been filed under regulations 16, 17 and 18 of the HPERC (Consumer Grievances Redressal Forum and Ombudsman) Regulations, 2013;

(2) The Complainant M/s JM Laborataries, Village Bhanat Deothi, Tehsil and District Solan (HP), bearing consumer ID 100012001363 is a consumer of the Respondent HPSEBL. Complainant is a Large Industrial Power Supply (LIPS – HT) category consumer availing supply at 11 kV;

(3) The instant matter is regarding raising of monetary demand of Rs 42,45,039/= on 25.08.2022 (Annexure C1) by the Respondent HPSEBL to the Complainant for the billing period of 15 months from June 2021 to August 2022, pursuant to discovery of metering error of slow meter by 80.2% in the above period.

COMPLAINANT

(4) The Complainant is aggrieved by the act of the Respondent to issue Demand Notice to Complainant on 25.08.2022 (Annexure C1) for the payment of amount of Rs 42,45,039/= for the reason that the original meter was found slow by 80.2% and consumption recorded less for the billing period from June 2021 to August 2022 (Annexure C3);

(5) The Complainant had been paying monthly bills (Annexure C4) and no arrears or disputed amount was ever reflected in the energy bills for the ibid past period. The consumption during the ibid

period is on average as per trend for the previous period from June 2020 to May 2021 (Annexure C2);

(6) The Respondent had inspected the premises of Complainant in May 2021 and no tampering was found. Subsequently new check metering equipment CT/PT were installed from 08.07.2022 to 08.08.2022. On 08.08.2022, the Respondent had installed new meter and replaced old meter without informing the Complainant of new and old meter readings. The Respondent has on its own come to wrong conclusion of wrong connections. The Respondent has not intimated to the Complainant of condition of the meter running slow;

(7) In the new charged bills, the demand has been shown increased for the period from June 2021 to August 2022 and has been calculated on wrong side. There is excess billing to the extent of Rs 20,06,678.56 (Annexure C5);

(8) The Respondent has failed to adhere to para 5.6.2 of the Supply Code Regulations, 2009 specified by the HPERC. The Bills containing arrears are bad in law, arbitrary and against principle of natural justice and canon of jurisprudence and also contrary to the provisions of Act, rules and regulations and that the Complainant is liable to pay the demanded amount;

(9) The Complainant has prayed for relief inter-alia to set aside and quash the demand notice (Annexure C1) for the less recoded consumption charged in bills for the months of June 2021 to August 2022 and to refund / adjust the excess amount charged of Rs 20,06,678.56;

RESPONDENT

The Respondent HPSEBL in their reply have submitted that –

(10) The action of the Respondent is in accordance with Central Electricity Agency (CEA) Regulations on installation and operation of meters and the HP Electricity Supply Code, 2009. As per these Regulations / Code it is the responsibility of licensee to check and test meter installed on consumer premises;

(11) When the consumption of consumer was noticed to be on lower side, the Respondent installed Check Metering equipment which revealed that the original meter installed was running slower by 80.2% (or 80%). The monetary demand has accordingly been raised to Complainant and such being statutory, Complainant is liable to pay the same;

(12) The demand Notice has been served upon the Complainant, based upon the Meter Test Report and error calculations (Annexure R1), charges calculations (Annexure R2) and MRI data (Annexure R3 Colly);

FORUM

(13) 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, HP Electricity Supply Code, 2009, Central Electricity Authority (or the CEA) Regulations on installation and operation of meters, 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;

(14) The primary issue arising from the complaint for determination by Forum is whether there was defective metering of the Complainant and whether Complainant is liable to pay monetary demand arising from less recording of consumption on the replaced meter vis-à-vis actual consumption done by the Complainant in the past?;

(15) At the outset, it is observed by this Forum that the Complainant has prayed for and sought relief in terms of setting aside and quashing of the Demand Notice dated 25.08.2022 (Annexure C1) for payment of amount of Rs 42,45,039/= on account of metering error (slowness) and for the adjusting / refunding the excess amount of Rs 20,06,678.56 on account of increased Demand (Annexure C5);

(16) Further, the Forum also observes that the Complainant is denying the slowness of meter / metering error (Annexure C1 Colly) in the 'replaced meter' by simply arguing that there was no intimation to the Complainant of slowness of meter, that no information of initial and final readings of 'new meter' or 'Check meter' was given to Complainant, that the Complainant had always paid bills and that bills of period June 2021 to August 2022 (Annexure C3) is on an average as per trend for the previous period from June 2020 to May 2021 and therefore the Respondent on its own has come to wrong conclusion of metering error;

(17) Forum finds that apart from raising above arguments, the Complainant has raised the statutory issue of non-compliance by

the Respondent of para 5.6.2 of the HP Supply Code, 2009 notified by the HP Electricity Regulatory Commission which is a limitation clause in pursuance to sub-section 56(2) of the Electricity Act, 2003;

(18) Forum further observes from record that the Respondent HPSEBL has considered the Meter Reading Instrument (MRI) data (Annexure R3 Colly) and Check Meter Test Report and error calculations (Annexure R1) and charges calculations (Annexure R2) based upon readings / consumption of this 'Check meter' to establish the fact of metering error, during the period June 2021 to August 2022;

(19) Forum finds from record that the MRI data sheets (Annexure R3 Colly), which depicts data of 'Check meter' as well as that of 'replaced meter', do establish metering error and therefore the Forum rejects the contentions raised by the Complainant. Further the Forum finds that the present matter is not of tampering of meter which may be treated under section 126 or section 135 of the Act, but where tampering is merely a technical condition of the meter suggesting some metering defect;

(20) It is a known fact that the actual energy consumption and its metering are two distinct aspects and these two aspects may not be in consonance at all times and disparity may arise between the two at any time. This is metering error. The metering error can be attributed to several reasons such as defective meter (slow, fast, dead-stop, burnt etc), defective metering equipment such as PT and/or CT, defective metering connections, human error intentional or unintentional, missing metering parameters such as voltages etc.

Thus in context of the instant complaint, tampering is only in terms of metering error due to some metering condition;

(21) Record does not lie. Considering the facts depicted by way of MRI data and the error calculations of the Check Meter consumption, this Forum finds no force in the arguments made by the Complainant that there is no metering error. The arguments extended by the Complainant are neither tenable nor relevant and therefore Forum rejects the arguments of the Complainant for the sole reason that there was a metering error in the past and consumption of electricity in excess of that recorded on the meter had actually taken place then, for which less monetary amount was charged by the Respondent HPSEBL at that time.

(22) The Forum is convinced that there was a metering error. In accordance with the error calculations (Annexure R1 / Annexure C1 Colly), this error is 80.2% implying that there is 80.2% less recorded consumption during the billing period June 2021 to August 2022;

(23) For the simple reason that electricity/energy which has actually been consumed by the Complainant is more than the energy recorded in the meter, and this energy could not be billed owing to such going unnoticed, it can safely be concluded that actual consumption by the Complainant is liable to be made good and the Complainant is now liable to pay for the balance consumption of electricity, else such will result in monetary loss to the Respondent distribution licensee who has incurred expenditure on the purchase of this electricity/energy. Non-recording or less recording by a meter cannot be a reason to allow free ride to any consumer for the

actual consumption of electricity that was made by the Complainant in the past. Therefore, the Respondent distribution licensee is liable to raise monetary demand towards the unrecorded part of consumption and the Complainant herein is liable to make payments towards this unrecorded part of consumption estimated on reasonable grounds such being less by 80.2% in the instant complaint. Therefore, additional electricity charges (Annexure R3) as arising are required to be paid under the said conditions. No one can be 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;

(24) On the contention raised by the Complainant with regard to demand which has been shown increased for the period from June 2021 to August 2022 and has been calculated on wrong side in excess to the extent of Rs 20,06,678.56 (Annexure C5), the Forum has heard both the parties. The Respondent informed that these Demand charges (Rs/kVA) were statutory in nature and were not wrong and were on account of increased Demand (in kVA) arising out of increased consumption owing to the metering error. Thus there is no excess billing to the extent of Rs 20,06,678.56 (Annexure C5) and therefore there is no question of adjusting / refunding the same. The Complainant did not dispute the same. The Forum therefore does not find merit in the contention of the Complainant and rejects the same;

(25) In view of foregoing position, once it is settled that there was a metering error in the past resulting in less recording of energy

consumption including demand (in kVA) by the installed meter, which the Complainant is now required to make good, the only issue remaining to be decided by the Forum, is whether the Respondent can raise 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 arose in the past and which went unnoticed being a bona-fide mistake / error and which was later raised vide impugned Notice dated 25.08.2022 (Annexure C1);

(26) 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 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.

(27) In the instant matter, the issue of the monetary demand of Rs 42,45,039/= by way of ibid Notice dated 25.08.2022 (Annexure C1), when examined, 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 by way of ibid Notice dated 25.08.2022 (Annexure C1);

(28) In the ibid Judgment of the Hon'ble Supreme Court dated 18.02.2020, which refers to other Judgments, 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.

(29) 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 eventualities are bad and against mandated provisions of Tariff Regulations on the matter;

(30) In the matter, this Forum holds that the Respondent HPSEBL did make a bona-fide mistake / error in the past by missing to raise 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 its legal rights to raise past arrears or dues 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 sub section 56(2), which is conspicuously missing on the part of the Complainant. The Forum finds that the monetary demand has been raised by the Respondent only on 25.08.2022 (Annexure C1) and therefore holds that in accordance with Hon'ble Apex Court Judgment dated 18.02.2020 in Civil Appeal 1672/2020, the demand is also not hit by the limitation period of 2 years specified in ibid sub section 56(2) of the Electricity Act, 2003;

(31) In view of foregoing observations, Forum finds no reason to interfere with the action of the Respondent to raise monetary demand against a metering error that arose in the past. The monetary demand of Rs 42,45,039/= raised vide Demand Notice

dated 25.08.2022 (Annexure C1) is accordingly upheld by the Forum and the Complainant is liable to pay the same. The complaint is accordingly decided against the Complainant and in favor of the Respondent HPSEBL;

(32) This Forum also observes that in majority of complaints, as also observed in this instant complaint, primarily the issues of past arrears as monetary demands by the Respondent HPSEBL, are raised by the consumer Complainants in general. These arrears may account for huge multiples of the running bills of the consumer and therefore 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 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 in monthly running electricity bill as installment of arrear, till such time the total amount of past period arrears are not received. This mechanism can then also justify electricity disconnection of consumer by the Respondent 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;

On aforesaid terms, the complaint filed by M/s JM Laboratories is accordingly decided on merits against the Complainant and in favour of the Respondents HPSEBL and stand disposed of as dismissed.

Parties are left to bear their own costs.

Order reserved on 15.02.2023, is announced before the parties present today on 03.03.2023 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: 03.03.2023

Shimla

Sd/-	**Sd/-**
Vikas Gupta	**Tushar Gupta**
(Member)	**(Chairperson)**

CONSUMERS GRIEVANCES REDRESSAL FORUM AT KASUMPTI, SHIMLA-09

No. CGRF/Complaint No. 1413/3/22/30

Complaint No.: - 1413/3/22/30

Date of Admission: - 30.09.2022

Quorum: - Er. Tushar Gupta, Chairman

Er. Vikas Gupta, Member

In ref:-

M/s J M Laboratories**,**
R/o Village Bhanat Deothi,
Tehsil and District Solan (HP) **Complainant**

V/s.

HPSEBL & Others.

Respondents

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

2. The Chief Engineer, Commercial, HPSEBL, Kumar House, Vidyut Bhawan Shimla-4.

3. The Superintending Engineer (OP), Circle HPSEBL, Saproon Solan, District Solan (HP).

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

5. The Assistant Executive Engineer, Electrical Sub-Division No. III HPSEBL, Solan, Distt. Solan (HP). **Respondents**

Final hearing:-03.03.2023

<u>Counsels:-</u>

Complainant 1. Sh. Vishal Panwar, Advocate.

Respondent 1. Sh. Kamlesh Saklani, Under Secretary Law.

Date of Decision: -03.03.2023

Notice

Registered

CONSUMERS GRIEVANCES REDRESSAL FORUM AT KASUMPTI SHIMLA-171009.

No.CGRF/Complaint No. 1413/3/22/30 **Dated:-**

M/s J M Laboratories,
R/o Village Bhanat Deothi,
Tehsil and District Solan (HP)

Complainant

V/s.

HPSEBL & Others.

Respondents

Complaint No. 1515/3/22/26

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

2. The Chief Engineer, Commercial,
HPSEBL, Kumar House,
Vidyut Bhawan Shimla-4.

3. The Superintending Engineer (OP), Circle
HPSEBL, Saproon Solan,
District Solan (HP).

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

5. The Assistant Executive Engineer,
Electrical Sub-Division No. III HPSEBL,
Solan, Distt. Solan (HP). **Respondents**

The Certified copy of final order dated 03.03.2023, passed by the Hon'ble Forum in the aforesaid complaint is enclosed herewith for further necessary action at your end please.

DA:-As above.

Secretary,
Consumers Grievances Redressal Forum,
HPSEBL, Kasumpti Shimla