



HIMACHAL PRADESH ELECTRICITY OMBUDSMAN

SHARMA SADAN, BEHIND KEONTHAL COMPLEX, KHALINI, SHIMLA-171002
PHONE 0177-2624525

In the matter of:

Case No. 63/2018

M/s Alliance Formulations Ltd, Plot No 30-31-32, EPIP-1, Baddi, Distt Solan (HP)
through its authorised representative Sh Rakesh Bansal & Rahul Mahajan, Advocates

Applicant/Representationist

Versus

- 1 The Executive Director (Personnel), HPSEB Ltd Vidyut Bhawan, Shimla-171004
- 2 The Asstt. Executive Engineer, Electrical Sub-Division, HPSEBL, Barotiwala
- 3 The Sr. Executive Engineer, Elect Division HPSEBL, Baddi HP)
- 4 The Superintending Engineer (Op) Circle HPSEBL, Solan (HP)

And

Respondents

In the matter of:

Representation under Regulation 28 (1) & (2) and 33 of HPERC (Guidelines for Establishment of Forum for redressal of Grievances of the Consumers) Regulations 2013 against the Order dated 13.06.2018 passed by the Consumers Grievances Redressal Forum of HPSEBL, Shimla-9 (H.P.) in Complaint No 1453/4/17/070 titled as M/s Alliance Formulations Ltd, Plot No 30-31-32, EPIP-1, Baddi, Distt Solan (HP) through its authorised representative Sh Rakesh Bansal & Rahul Mahajan, Advocates

28.11.2018

Present for:

Applicant: Sh. Rakesh Bansal, Advocate

Respondent: Sh Bhagwan Chand, Advocate

Sh. Jeet Ram Verma, Jr Asstt. ED Baddi

ORDER

(Last Heard on 28.11.2018)

Heard Taking into consideration, the arguments exchanged by representatives of both the parties during the course of hearing and the Application/Petition and Additional submission in support of the Order date 13.06.2018 passed by the Consumers Grievances Redressal Forum of HPSEBL, Shimla-9 (H.P.) in Complaint No 1453/4/17/070 titled as M/s Alliance Formulations Ltd, Plot No 30-31-32, EPIP-1, Baddi, Distt Solan (HP) through its authorised representative Sh Rakesh Bansal & Rahul Mahajan, Advocates

Complainant's Contention:

1. The complainant, Alliance Formulations is a large industrial supply consumer with a connected load of 480 kW and contract demand of 320 kVA. Another consumer by the name Johnson & Johnson Ltd. was also connected from the transformer of the complainant as a sub-metering arrangement and a separate meter was installed for recording energy consumption of M/s Johnson and Johnson. Energy bills were issued to the complainant without deducting consumption of the sub-meter for the period 09/2004 to 03/2008. M/s Johnson & Johnson had upgraded their connection to HT supply through their own separate transformer. No deduction for sub-meter consumption was given to the complainant for almost three and a half years to the complainant who was paying the bills of the main meter even till the time that the sub-meter was permanently disconnected. The respondents recovered the amount chargeable on energy consumption from the user of the sub-meter. In addition to the recovery made from the complainant, the complainant was eligible for equivalent refund from the respondents to the extent of recovery carried out from the sub-meter connection after necessary adjustments if any. The complainant approached the respondents in various ways such as visits and written letters, but of no use. After exchange of many letters between the Assistant Executive Engineer, Electrical Sub-Division, Additional SE, Baddi division, SE Solan and the complainant, the refund did not come through and the respondents are deliberately delaying the refund due to the complainant. The complainant was thus left with no option than to approach the Hon'ble Forum for justice in the matter.
2. The forum, without going into the merits, held that the complainant was time-barred under Section 56(2) of the electricity Act, 2003. The forum also ignored that the matter was in constant perusal of the respondents and the delay was actually on the part of the respondents.
3. That M/s Alliance Formulations Ltd. i.e. appellant/complainant company is aggrieved against the findings of the Consumer Grievance Redressal forum HPSEBL, whereby it has held that the complaint is time barred and is thus filing the said representation inter alia on the following amongst other grounds:-

a) That the order dated 13.06.2018 passed by the Consumer Grievances Redressal Forum of HPSEBL in complaint No. 1453/4/17/070 in complaint titled as Alliance Formulations Ltd V/s HPSEBL and others, (hereinafter referred to as the impugned orders) whereby the consumer Grievances Redressal Forum of HPSEBL has observed that the complaint is time barred under section 56(2) of the Electricity Act, 2003. Section 56(2) of the electricity Act, 2003 is reproduced as under:

"56(2) Notwithstanding anything contained in any other law for the time being in force, no sum due from any consumer, under this section shall be recoverable after the period of two years from the date when such sum became first due unless such sum has been wholly continuously as recoverable as arrear of charges for electricity supplied and the licensee shall not cut off the supply of the electricity."

Section 56 of the Act, only deals with disconnection of supply in case of default in payment by the consumer. It is only applicable for the sum due from the consumer, but not vice versa. The forum has wrongly applied the provisions of section 56(2) of electricity Act 2003 on the dues claimable by the consumer and has denied relief sought by the complainant. The orders of the Forum are bad in law and, thus, deserves to be quashed and set aside.

b) That the impugned order dated 13.06.2018 passed by the Consumer Grievances Redressal Forum of HPSEBL is unjust and unfair as the respondents have charged for the same consumption twice from the two consumers. Once the consumption was charged from the main meter and the same consumption was also billed to the sub-meter. The orders of the forum are thus bad in law and deserve to be quashed and set aside as the same has allowed double recovery and undue enrichment of the respondents at the cost of the complainant, which defeats the principle of natural justice.

c) That the impugned order dated 13.06.2018 passed by the Consumer Grievances Redressal Forum of HPSEBL is bad in law, ought to be quashed and set aside as the LD Forum's decision in this complaint as the delay was always on the part of the respondents, who did not perform their duty as per rules. It was the binding responsibility of the respondent to raise correct bills to the consumers, rather than the consumers asking them for corrective action.

time and again. The delay was on the part of the respondents only, who kept on delaying the matter by way of writing various letters among their offices at sub-division, Division and Circle level. The inaction on their part has led to delay in approaching the Forum. The complainant on the basis of the recommendations sent by the lower offices for refunding the disputed amount kept waiting and has written several letters.

d) That the impugned order dated 13.06.2018 passed by the Consumer Grievances Redressal forum of HPSEBL is bad in law, ought to be quashed and set aside as the field officers of the respondents had several times recommended the refund of Rs. 4,47,169/- vide their letters dated 22.05.2014, 23.06.2014 and 13.01.2015. In these letters, it has been repeatedly mentioned that the claim of the complainant consumer is valid and they have clearly admitted that the consumption was billed twice, once from the main meter and secondly from the sub-meter also.

4. That the appellant/complainant company has not filed any other appeal on the same or similar facts against the order dated 13.06.2018 passed by the Consumer Grievances Redressal Forum of HPSEBL in Complaint No. 1453/4/17/070 in complaint titled as Alliance Formulations Ltd V/s HPSEBL and others except the present appeal.

It is, therefore, respectfully prayed that the appeal may kindly be allowed and the findings of the forum for redressal of Grievances of HPSEBL Consumer dated 13.06.2018 passed in complaint No. 1453/4/17/070 in Complaint titled as Alliance formulations Ltd v/s HPSEBL whereby the Ld Forum has held that the amount of refund demanded by the complainant is time barred, is bad in law and deserve to be quashed and set aside or any further orders which this Hon'ble Ombudsman may deem fit and proper, in the facts and circumstances of the case may kindly be passed in favour of the appellant/complainant company and against the respondents/distribution licensee.

Respondents Contention:

It is submitted that there is no record available in the HPSEBL Office, which proves that so called sub metering was actually done. It is hypothetical assumption and without any concrete documentary evidence at this stage after a period of 10 to 14 years, no action can be taken. Therefore as per the notification No. 19 (c) limitation/pre conditions for submission of grievance of HPERC, Shimla No. HPERC (H)(1) 1/2012 dated 23rd January, 2013 Hon'ble Court is requested to reject the grievance as the same has been raised ten years after the date on which the cause of action has arisen.

In view of the submission made hereinabove it is most respectfully prayed that Hon'ble Court may very kindly dismiss the present complaint filed by the complainant in the interest of justice and fair play.

Forum's Order:

M/s Alliance Formulations, Plot No 30-31-32, EPIP 1, Baddi has filed a petition in this Forum that Power connection having a/c No. NIPS-1122208676/ILP 416 is in their name and Connected Load of his industry is 480 kW with contract Demand of 320 kVA. Another consumer by the name of Johnson and Johnson Ltd. Was also connected from the transformer of the consumer as a sub-metering arrangement and a separate meter was installed for recording energy consumption of M/s Johnson and Johnson Energy bills were issued to the consumer without deducting consumption of the Sub-Meter for the period 09/2004 to 03/2008 i.e. almost three and a half years. The disputed amount on this account is to the tune of Rs 4,44,169/-

The Respondent Board in their reply have refuted the above charges and have stated that there is no record available in the HPSEBL office which proves that so called sub metering was actually done. It is hypothetical assumption and without any concrete documentary evidence at this stage after a period of 10 to 14 years, no action can be taken. Therefore as per the notification No. 19 (c) (Limitation/pre-condition for submission of grievance of HPERC, Shimla No. HPERC (H)(1) 1/2012 dated 23rd January, 2013) i.e. Forum is requested to reject the grievance as the same has been raised ten years after the date on which the cause of action has arisen.

Forum orders that Complainant has approached to this forum to refund the charges almost after a laps of more than 9 years so as per Electricity Action 56(2) the claim is time barred and Respondent Board is not liable to refund any amount.

The case is decided in favour of Respondent Board and against the complainant.

Electricity Ombudsman findings and Order:

M/s Alliance Formulations, Plot No 30-31-32, EPIP 1, Baddi has filed a complaint against the Forum's Order dated 13.06.2018 passed in complaint No. 1453/4/17/070 titled as M/s Alliance formulations Ltd v/s HPSEBL whereby the Ld Forum has held that the amount of refund demanded by the complainant is time barred.

After going through all the submissions written as well as oral, of both parties i.e. complainant and respondents, it is quite clear from the letter of Addl. Superintending Engineer, Electrical division, HPSEBL, Baddi No. HPSEBL/BED/WSG/14-15-11/66-67 dated 13.1.2015 that Addl. Superintending Engineer agreed to the fact that complainant M/s Alliance Formulations (LP-416) had made an excess payment for energy actually consumed by them and amount Rs. 4,47,169/- deposited by M/s Johnson & Johnson becomes due to them on account of excess payment. The same thing has been confirmed by the Asstt. Executive Engineer, Electrical sub-Division, HPSEBL, Barotiwala vide letter No. HPSEBL/ESDB/LP-416/2014-15-246-47 dated 22.5.2014 addressed to the Superintending Engineer, Operation Circle, HPSEBL, Solan that the A/c No. MS-193 was sub meter of LP-416 w.e.f. 7.10.2004 to 08.04.2008 and billed for Rs. 4,55,339/- only including all charges. Net amount to be refunded Rs. 4,47,169. The consumer made the payment vide Rt. No. 0096278 dated 08/05/2008. The approval sought by ASE & AEE from the competent authority to refund the amount, however, was never accorded and the case kept "lingering" for huge amount of time till the complainant approached CGRF. The Respondent submitted that the complainant's grievance be rejected as per the notification No. 19 (C) (Limitation/pre-condition for submission of grievance of HPERC, Shimla No. HPERC (H)(1) 1/2002 dated 23 January, 2013 as the same has been raised ten years after the date of which the ^ucase of action has arisen. The CGRF in its order stated that the complainant approached the CGRF after a lapse of more than 9 (Nine) years, so as per Electricity Act Section 56(2) the claim is time barred and Respondent Board is not liable to refund any amount.

After pursuing all these it is concluded that the claim of complainant has been established by the Addl. S.E. and AEE and on the merit of the case the refund is allowed. The claim (refund) of complainant cannot be rejected/refused merely on technicalities.

The compliance be reported within one month from the issue of the order.

Dated: 30.11.2018


Electricity Ombudsman