HIMACHAL PRADESH ELECTRICITY OMBUDSMAN
SHARMA SADAN, BEHIND KEONTHAL COMPLEX, SHIMLA-171002
Phone: 0177-2624525, email: ombudsmanelectricity.2014@gmail.com

In the matter of:

M/S Nasaka Energy Systems, Village Gullarwala, PO Baddi, Tehsil Baddi, Distt Solan HP-173205

– Complainant

Vs

1. Executive Director (Personal), HPSEBL, Vidyut Bhawan, Shimla-HP-171004
2. Assistant Executive Engineer (E), Electrical Sub-Division, HPSEB Ltd, Baddi, Distt Solan HP - 173205
3. Sr Executive Engineer (E), Electrical Division, HPSEB Ltd, Baddi, Distt Solan HP-173205

- Respondents

Complaint No. 14/2020, Received on 28/02/2020
Decided on 09/09/2020

CORAM

K L Gupta
HP Electricity Ombudsman

Counsel for:

Complainant:	Sh. Rakesh Bansal
Respondents No. 1,2 & 3:	Mr Anil Kumar God, Advocate

Order

(Case previously heard on 25/07/2020 and Reply sought by 07/08/2020 and Rejoinder by 14/08/2020)

Although the case was last listed for 27/03/2020 but due to Covid-19 Pandemic lockdown enforced w.e. from 23/03/2020 onwards, the case could not be heard. The delay caused in deciding the case was beyond control. The case was finally listed for 25/07/2020 and the Respondents were directed to submit their reply by 07/08/2020. The Complainant was also directed to submit their Rejoinder by 14/08/2020. No further hearing in the case was done.

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A – Brief Facts of the Case:

1. M/S Nasaka Energy Systems has filed this application through Sh. Sanjeev Verma, Manager of the Firm, who has been authorized to sign, institute, verify swear affidavits, suits, complaints, appeal and other proceedings to protect the interest of M/S Nasaka Energy System and to engage counsel (s)/Advocate (s) (hereinafter referred as the Complainant). The Complaint has been filed under regulation No. 28 (b) of the Himachal Pradesh Electricity Regulatory Commission (Consumer Grievances Redressal Forum and Ombudsman) Regulations, 2013. The Complainant has preyed to set aside the orders of the Consumer Grievances Redressal Forum dated 18/02/2020 in Complaint No.1454/3/19/048, dated 24/09/2019 in respect of recovery of arrears and surcharge on arrears.

B – The Complainant's Submissions:

1. The Complainant submits that he is a consumer under the Electricity Act, 2003 i.e. Section 2 sub-Section 15 and the Respondents are distribution licensee under Section 2 Sub-Section 17 of the Electricity Act, 2003. The Complainant Company is also a Consumer under Section 3 (d) of the HPERC Regulation 2013. The Respondents have failed to adhere to the provisions of the Sales Manual, 2017, Supply Code, 2009 and other Regulations notified by HPERC.

2. The Complainant submits that he has a sanctioned Connected Load of 98 kW at 11 kV under temporary category of consumers and is engaged in manufacture of electronic products. The Complainant is issued bills on monthly basis as per provisions of the tariff order, Supply Code, 2009 and Sales Manual issued by the Respondents. The Complainant has been regularly paying the electricity dues on regular basis within the due dates.

3. The Complainant submits that in the month of August 2019, the Complainant received a bill from Respondent number 2 in which there were sundry charges of Rs. 39,60,562/- in addition to the amount of Rs. 73,569.02 billed for regular routine consumption during the previous month. The Respondents never gave any detail along with the bill by which the nature of Sundry Charges could be ascertained. The Complainant approached the office of the Respondent No.2 and was verbally told that amount charged as Sundry Charges was on account of wrong multiplying factor that was being charged from the date from which the connection was released. However, the period covered under overhauling was not explained to the Complainant but it is estimated by the Complainant that it could be about seven years. The Complainant not being satisfied with the explanation given by the Respondent could not deposit the said amount. The Respondent No. 2 issued another bill during the following month in which the arrears were carried forward along with the surcharge on arrears amounting to Rs. 70,165/- besides the regular billing arrears.

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4. The Complainant submits that vide this complaint he is disputing an amount of Rs.40,36,727/- (Rs. 3960562 as Sundry Charges + Rs. 70165 as Late payment surcharge on Sundry Charges). The Complainant, in the month September 2019, deposited the amount billed in the bill issued in months of August and September 2019 including late payment surcharge on regular amounts, but did not deposit the disputed amount explained above. The Complainant also submitted a letter dated 17/09/2019 written to Respondent number 2 and explained the details of amount deposited by him and conveyed his disagreement to pay the Sundry charges on account of wrong multiplying factor.

5. The Complainant further submits that he is aggrieved against the findings of the CGRF whereby the orders passed by them is bad in law and against the principles of natural justice and is thus filling the said appeal inter-alia on the following other grounds:-

   a) That the impugned order dated 18/02/2020 passed by the CGRF in complaint number 1454/3/19/048 is bad in law and is liable to be set aside, as the Respondents are total failure with regard to the procedure defined in the Supply Code, 2009 related to issuance and recovery of bills. The important provisions of the Supply Code, 2009 that are relevant in the present case are:

   "1.2.6 "billing cycle" means the period for which the bill is raised;

   5.1.1 The licensee shall issue bills to the consumers for the electricity supplied or for services rendered for every billing cycle and all the consumers will effect payments to the licensee within of the licensee or any other place 5.3 at the designed offices of the licensee or any other place designated by the licensee for the purpose.

   5.2.1.1 Monthly billing cycle shall be applicable in urban areas including industrial areas, District headquarters, Municipal Corporation area, Municipal Council areas, Nagar panchayat areas, Special Area, Development Authority areas, and for the other areas, except for tribal and difficult areas as notified by Government of Himachal Pradesh under the policy for transfer of employees, the billing cycle shall be bi-monthly. In case of the tribal and difficult areas the billing cycle shall be bi- monthly, except for the winter for which the billing cycle shall not be of more than 4 months.

   5.2.5 (a) A consumer bill will disclose the periodicity of billing, date when the meter was read, the date of issue of bill, the due date for payment and the additional amount payable in case payment is delayed. The bill will also include other particulars as detailed in Annexure-B.

H.P. Electricity Ombudsman Khalini, Shimla-2 *(b) The bill for arrears, in case of underassessment or the charges levied as a result of checking etc., will be initially tendered separately, indicating in bill the nature, period of arrears, the number and amount of instalments allowed and the arrear will not be clubbed with the current electricity bill. Subsequently the amount of said arrear bill shall be reflected in the next billing cycle till not paid. For purpose(s) of action(s) of licensee on non-payment of billed amount, the arrear amount shall be accounted as per of final bill due of any billing cycle.*

However in case any amount of the bill is disputed by the consumer, such disputed amount as well as the late payment surcharge thereon shall also be reflected, and continue to be reflected, separately in the ledgers, till such time such amount remains unpaid/unsettled, so that total updated quantum of such disputed amount is readily available. Such details shall be made available to the consumer on request."

The Complainant submits that consumption bills have already been issued to the Complainant and there is no scope for issuance of supplementary bills. The bill for arrears can be raised in case of underassessment or checking as in cases of cases u/s 126 or section 135, but not in the present case to cover the inefficiencies and mistakes of the Respondents.

b) that the impugned order dated 18.02.2020 passed by the CGRF in complaint number 1453/3/19/048 is bad in law and is liable to be set aside as CGRF has totally relied on the instruction No. 26.4.1 of the Sales Manual, 2017, which reads as follows:

"In case CT/PT meters where the accuracy of the meter is not involved and it is a case of incorrect connections, defective CTs/PTs, genuine calculations & mistakes etc., charges would be adjusted in favour of the HPSEBL/ consumer as the case may be for the period the mistake / defect continued."

The CGRF has read this instruction in isolation and has ignore the fact that another instruction No. 39.2 in the same sales manual specifies the ;imitation period to a maximum period of two years, unless the dues have been continuously shown as arrears in the energy issued to the consumer. The said instruction is reproduced below"

"39.2 Limitation:

Notwithstanding anything contained in any other law for the time being in force, no sum due from any consumer, shall be recoverable after the period of two years from the date when such sum became first due unless such sum has been shown continuously as

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recoverable as arrear of charges for electricity supplied and the licensee shall not cut off the supply of the electricity:"

The heading of the instruction number 39.2 itself is clear enough as it specifies the limitation period of two years. The world **"for the period the mistake/defect continued."** Have been read in isolation. It both the instructions are read together, it is very clear that overhauling has to be carried out for the period such mistake/ defect continued, but within the limitation period of two years only.

c) That the impugned order dated 18.02.2020 passed by the CGRF in complaint number 1453/3/19/048 is bad in law and is liable to be set aside as the CGRF has put no responsibility on the erring officers, who were responsible for under billing to the Complainant. Therefore, the orders passed by the CGRF in favour of the Respondents are partial, unfair and discriminatory in nature so as to conclude that all the mistakes on the part of the licensee are to be overlooked and only the consumer has to suffer for the mistake of the Respondents;

d) That the impugned order passed dated 18.02.2020 passed by the CGRF in complaint number 1453/3/19/048 is bad in law is liable to the set aside as the sales manual instruction was only notified on 17.10.2017, whereas the arrears in question pertain partly to the period much before 17.10.2017. The CGRF has wrongly applied the sales instruction number 26.4.1 with retrospective effect. The Complainant is still not clear as to the exact period of arrears and the exact calculations and period for which the wrong bills were issued has not been informed to the Complainant even till the date of filling this representation;

e) That the impugned order passed dated 18.02.2020 passed by the CGRF in complaint number 1453/3/19/048 is bad in law is liable to the set aside as the demand raised by the Respondents is in contravention of Clause 5.6.2 of the Supply Code, 2009 reproduced below:

"5.6.2 Notwithstanding anything contained in any other law for the time being in force, no sum due from any consumer, under this Code shall be recoverable after the period of two years from the date when such sum become first due unless such sum has been shown continuously as recoverable as arrear of charges for electricity supplied."

The Respondent should not have raised demand for a period older than two years.

f) That the impugned order dated 18.02.2020 passed by the CGRF in complaint number 1453/3/19/048 is bad in law is liable to the set aside as the Complainant has been paying the entire amount of bills issued to him as and when they were raised, Generally by the due date of the bills. The Complainant, having no knowledge of the metering system cannot be held responsible for omission/ error on the part of the Respondents. The Complainant, by taking the cost of electricity billed to him, among other cost components, has further carried out the costing of his products and have sold the goods at a price determined on the basis of electricity expense billed to him, among other cost components, has further carried out the costing of his products and have sold the goods at a price determined on the basis of electricity expenses to him. The Complainant now has no way to charge the additional/supplementary bills from his customers or change the supply price, when all the supply bill have settled as per agreed terms with the customers of the Complainant.

g) That the impugned order dated 18.02.2020 passed by the CGRF in complaint number 1453/3/19/048 is bad in law and is liable to be set aside as the demand raised by the Respondents was time barred under section 56(2) of the Electricity Act, as this demand was never shown continuously as recoverable as arrears in the energy bills issued to the Complainant. The matters of debate of limitation period u/s 56(2) has now been put to rest by a recent judgement pronounced by the High Court of judicature at Bombay Civil Appellate jurisdiction adjudged by a three judge bench in the writ petition No. 10764 of 2011 in the case of Maharashtra state Electricity Distribution Company Ltd. versus the Electricity Ombudsman, Mumbai. The key paras of judgements are as follows:

"Issues addressed in the judgement:

12 Hence, I deem it necessary to request the Hon'ble the Chief Justice to refer the following issues to the larger Bench consisting of at least 3 judges. The issue to be referred is as under:

i) Whether irrespective of the provisions of Section 56(2) of the Electricity Act, 2003, Distribution Licensee can demand charge for consumption of electricity for a period of more than two years preceding the date of the first demand of such charges;

ii) Whether the charges for electricity consumed become due only after a demand bill issued by the Distribution Licensee and whether the Distribution Licensee can issue a demand bill even for the period preceding more than two years from the date of

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issuance of demand bill notwithstanding the provision of subsection 2 of Section 56 of the electricity Act,2003.

iii) Which of the judgments of the Division Bench namely Awadesh S. Pandey v/s. Tata Power Co. Ltd., reported in AIR 2007 Bombay 52 or the judgement of the Division Bench in the case of ***Rototex Polyester & Another, reported in 2010(4)*** *have correctly interpreted the provisions of Section 56(2) of the Electricity Act."*

The conclusion in the judgement is given below:

"77. There, Division Bench held and agreed with the learned Single judge of this Court that the sum became due and payable after a valid bill has been sent to the consumer. It does not become due otherwise. Once again and with great respect, the understanding of the Division Bench and the learned Single judge with whose judgment the Division Bench concurred in Rototex Polyester (supra) is that the electricity supply is continued. The recording of the supply company/distribution company raises a bill. That bill seeks to recover the charges for the month to month supply based on the meter reading. For example, for the month of December, 2018, on the basis of the meter reading, a bill would be raised in the month of January, 2019. That would be served on the consumer giving him some time to pay the sum claimed as charged for electricity supplied for the month of December, 2018.

Thus, when the bill is raised and it is served, it is from the date of the service that the period for payment stipulated in the bill would commence. Thus, within the outer limit the amount under the bill has to be paid else this amount can be carried forward in the bill for the subsequent month as arrears and included in the sum due or recoverable under the bill for the subsequent month. Naturally, the bill would also include the amount for that particular month and payable towards the charges for the electricity supplied or continued to be supplied in that month. It is when the bill is received that the amount become first due. We do not see how, therefore, there was any conflict for Awadesh Pandeys case (supra) was a simple case of threat of disconnection of electricity supply for default in payment of the electricity charges. That was a notice of disconnection under which the payment of arrears was raised. It was that notice of disconnection setting out the demand which was raised on the basis of the order of the Electricity Ombudsman. Once the Division Bench found that the challenge to the Electricity Ombudsman's order is not raised, by taking into account the subsequent relief granted by it to Awadesh Pandeys writ petition. The reason for that was obvious because the demand was reworked on the basis of the order of the Electricity Ombudsman. That partially allowed the appeal of Awadesh Pandey. Once the facts in Awadesh Pandeys case were clear and there the demand was within the period of two years, that the writ petition came to be dismissed. In fact, when such amount became first due, was never the controversy. In Awadesh Pandeys case, on *facts, it was found that after reworking of the demand and curtailing it to the period of two years preceding the Supplementary bill raised in 2006, that the bar carved out by subsection(2) of Section 56 was held to be inapplicable. Hence there, with greatest respect, there is no conflict found between the two Division Bench Judgments.*

78. Assuming that it was and as noted by the Learned Single Judge in the referring order, still, as we have clarified above, eventually this is an issue which has to be determined on the facts and circumstances of each case. The legal provision is clear and its applicability would depend upon the facts and circumstances of a given case. With respect, therefore, there was no need for a references. The para 7 of the Division Benchs order in Awadesh Pandeys case and paras 14 and 17 of the latter judgement in Rototex Polyesters case should not be read in isolation. Both the judgments would have to be read as a whole. Ultimately, judgments are not be read like statutes. The judgments only interpret statutes, for statutes are already in place. Judges do not make law but interpret the law as it stands and enacted by the parliament. Hence, if the Judgments of the two Division Benches are read in their entirety as a whole and in the backdrop of the factual position, then, there is no difficulty in the sense that the legal provision would be applied and the action justified or struck down only with reference to the facts unfolded before the Court of law. In the circumstances, what we have clarified in the foregoing paragraphs would apply and assuming that from the judgement in Rototex Polyesters case an inference is possible that a supplementary bill can be raised after any number of years, without specifying the period of arrears and the details of the amount claimed and no bar or period of limitation can be read, though provided by subsection (2) of Section 56, our view as unfolded in the foregoing paragraphs would be the applicable interpretation of the legal provision in question. Unless and until the preconditions set out in subsection (2) of section 56 are satisfied, there is no question of the electricity supply being cutoff. Further, the recovery proceedings may be initiated seeking to recover amounts beyond a period of two years, but the section itself imposing a condition that the amount sought to be recovered as arrears must, in fact, be reflected and shown in the bill continuously as recoverable as arrears, the claim cannot succeed.

Even if supplementary bills are raised to correct the amounts by applying accurate multiplying factor, still no recovery beyond two years is permissible unless that sum has been shown continuously as recoverable as arrears of charges for the electricity supplied from the date when such sum became first due and payable.

79. As a result of the above discussion, the issues referred for our opinion are answered as under:

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A) The issue No. (i) is answered in the negative. The Distribution licensee cannot demand charges for consumption of electricity for a period of more than two years preceding the date of the first demand of such charges.

B) As regards issue No. (ii) in the answer to issue No.(i) above , this issue will also have to be answered accordingly. In other words, the distribution licensee will have to raise a demand by issuing a bill and the bill may include the amount for the period preceding more than two years provided the condition set out in subsection (2) of Section 56 is satisfied. In the sense, the amount is carried and shown as arrears in terms of that provision.

C) The issue No. (iii) is answered in terms of our discussion in paras 77 & 78 of this judgment.

As such, the dues demanded by the Respondents are illegal in term of the Electricity Act, 2003.

h) That the impugned order dated 18.02.2020 passed by the CGRF in complaint number 1453/3/19/048 is bad in law and is liable to be set aside as the Hon'ble Appellate Tribunal of Electricity in its judgement in Appeal Number 74 of 2007 in the matter of Ajmer Vidyut Nigam Limited verses Rajasthan Electricity Regulatory Commission and other has held that

"48) The appeal No. 202 & 203 of 2006 was also a case of defective meter. The meter was replaced but the bill for the dues had not been immediately raised. The bill was raised after two years. Till then the claim of the Electricity Distributing Company had not become barred by limitation on account of application of section 17 of the Limitation Act. Therefore, the appeal deserved to be allowed. This tribunal did allow the appeal although on a different analysis. It will not be correct to say that the judgment in Appeal Nos. 202 & 203 of 2006 lays down a law that the period of limitation shall not run even if the DISCOM is negligent in raising the bill and allows three years to pass even after defect in the meter was discovered.

49) Applying the above analysis to our case the amount claimed by the AVVNL is subject to the general law of limitation and anything failing due prior to three years from the date on which the claim is made would be barred by limitation as prescribed by the limitation Act, 1963."

i) That the impugned order dated 18.02.2020 passed by the CGRF in complaint number 1453/3/19/048 is bad in law and is liable to be set aside as the orders passed in the

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present case by CGRF are inconsistent with the orders dated 13.11.2018 passed in a similar case in complaint number 1515/3/18/041, where the CGRF observed that the Respondents can only recover arrears for a period of two years as per section 56(2) of the Electricity Act, 2003. The Complainant is also thus, entitled to at least similar relief as the matter is similar to a great extent.

6. It is , therefore, respectfully prayed that the appeal may kindly be allowed and the findings of the Consumers Grievances Redressal Forum of HPSEB Consumers detailed in orders dated 18.02.2020 passed in Complaint No. 1453/3/19/048 in Complaint titled as Nasaka Energy System v/s HPSEBL whereby the Ld. Forum has decided the complaint against the Complainant, is bad in law and deserve to be set aside of further orders which this Hon'ble Electricity 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.

7. The Complainant prayed to quash the recovery of arrears on account of incorrect multiplying factor; to quash the recovery of surcharge applied on the arrears; to order interest to be paid on the account refundable to the Complainant for the Supply Code, 2009 and CGRF & Ombudsman Regulations, after the matter is decided and to direct the Respondents to pays Rs. 100000/- to the Complainant on account of cost of litigation.

8. The Complainant/ Applicant has also filed stay application for operation and execution of orders dated 18/02/2020 of Consumer Grievances Redressal Forum.

C – The Respondents Submissions:

Preliminary Objection

1. The Respondents submits that the complaint is not maintainable as the petitioner has not exhausted all the remedies available all the remedies available to it under the law.

2. They further submits that the complaint is based on mere apprehensions, surmises and conjectures. The petitioner has made misleading statement, therefore, on this score alone the petition deserve dismissal and the impugned order 18/02/2020 passed by the Ld. CGRF is as per the rules & regulations.

3. The Respondents submits that the Complainant has suppressed material facts from this Hon'ble court, hence, he is guilty of superssio very falsus uno and the impugned order served by the Ld. CGRF does not suffer from any infirmity or illegality hence, the present petition deserves dismissal.

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Background.

4. The Respondents submits that it is emphatically denied that they have committed any acts of omission and commission and further any injustice has been done to the petitioner. The writ petition filed by the petitioner is not maintainable.

Reply of detail of Grievances:-

5. The Respondents submits that the Connected Load of 98 kW load with a Contract Demand of 63 kVA was released on 11 kV supply Voltage on dated 20/09/2012 under temporary category. During installation of check metering equipment on dated 05/08/2019 in the presence of Complainant's representative, the result of the check metering equipment installed showed that the multiplying factor was 0.1 instead of 1 due to clerical mistake and accordingly the Respondent board overhauled the Complainant consumer account & charged the amount Rs 39,60,562/- through sundry during 08/2019 in energy bill in accordance with the Sales Manual instruction 26.4.1.

Point wish reply of grounds of Representation:-

6. The Respondents submits that the impugned order dated 18.02.2020 passed by Ld. CGRF does not suffer from any infirmity or illegality hence, the present complaint deserves dismissal and orders passed by Ld. CGRF in complaint number 1453/3/19/048 is no need to be modified.

7. The Respondents submitted that the impugned order dated 18/02/2020 passed by Ld. CGRF in complaint No. 1453/3/19/048 are in accordance with Sales Manual Instructions 26.4.1 which is read as ***"In case of CT/PT meters where the accuracy of the meter is not involved and it is a case of incorrect connections, defective CTs/PTs, genuine calculations & mistakes etc., charges would be adjusted in favour of the HPSEBL/ Consumer as the case may be for the period the mistake/defect continued".***

8. The Respondents submitted that the Complainant have not come up with clean hand and suppressed the material facts from this court. The Complainant consumer has made the misleading statement, therefore, on this score the Complainant deserves dismissal

9. The Respondents submits that they have performed its functions in transparent manner in accordance with the principle of natural justice and the provision of law. During installation of check metering equipment on dated 05/08/2019 in the presence of Complainant's representative, the result of the check metering equipment installed showed that the multiplying factor was 0.1 instead of 1 due to clerical mistake and accordingly the Respondent board overhauled the Complainant consumer account & charged the amount Rs 39,60,562/- through sundry during 08/2019 in energy bill. The

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demand was made as there was an error in calculation of the electricity bills. On the basis of that error the supplementary electricity bill were being issued to the Complainant to the extent of 50% of the consumed electricity only. This fact came to the notice of the Respondents on the date of checking on 05/08/2019 and accordingly the Respondent board in accordance the sales manual instruction 26.4.1 raised the demand.

10. The Respondents submitted that the section 56 (2) of the Indian Electricity Act 2003 did not preclude the licensee company from raising an additional or supplementary demand after the expiry of the limitation period of two years. It only restrict the right of the licensee to disconnect electricity supply due to non- payment of dues after the period of limitation of two years has expired, nor does it restrict other modes of recovery which may be initiated by the licensee company for recovery of supplementary demands.

11. The Respondents submits that as per the section 17(1) (c) of the limitation Act, 1963, in case of mistake, the limitation period begins to run from the date when the mistake is discovered for the first time. In the present case, the period of limitation would commence from the date of discovering of mistake i.e. 05/08/2019

12. The Respondents submits that the Complainant consumer quoted the reference of case **M/s Rototex Polyester & Anr. Vs Administrator, Admission of Dadra and Nagar Haweli (UT) of the Bombay High Court** where in the judgement order, the Hon'ble court ordered in para 14 that *" The principle which can be deducted from the above judgment is that in case the consumer is under billed on account of clerical mistake such as the present case, where the multiplication factor had changed from 500 to 1000, but due to oversight, the department issued bills with 500 as multiplication factor instead of 1000, the bar of limitation cannot be raised by the consumer. Though section 26 (6) of the Indian Electricity Act, 1910 is not pari material with section 56 (2) of the Electricity Act, 2003, in our opinion, the present case would be governed by the above principle and, hence the challenge raised by the petitioner must failed."*

And in para 18 Hon'ble Court concluded that ***"section 56(2) of the Electricity Act 2003 would not come in the way of the Respondent from recovering the said amount under the revised bills."***

13. The Respondents submits that due to clerical error in the bills, the demand raised by them in present case, is valid and justified and also not barred by limitation. Further, section 56(2) of the Indian Electricity Act 2003 did not preclude the licensee company from raising an additional or supplementary demand after the expiry of the limitation period of two years. It only restrict the right of the licensee to disconnect electricity supply

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due to non- payment of due after the period of limitation of two years has expired, nor does it restrict other modes of recovery of supplementary demands.

14. They further submitted that the section 17(1) (c) of the limitation Act, 1963, in case of a mistake, the limitation period begins to run from the date when the mistake is discovered for the first time. In the present case, the period of limitation would commence from the date of discovering of mistake i.e. 05/08/2019.

D – The Complainant's submission through rejoinder:

1. The Complainant repeated, reiterated and confirmed all the statements and averments made by them in the complaint and deny all the statements and averments made in the reply of Respondents unless and until the same are specifically admitted by the Complainant Company. The objections raised by the Respondents are lacking merit.

Preliminary Objections:

2. The Complainant denied that they have already exhausted the remedies available to him under law before approaching the Ld. Electricity Ombudsman for redressal of grievance. The Complainant has only approached the Ombudsman after representing this grievance earlier before the Consumer Grievance Redressal Forum of HPSEBL, and the present representation is well within the scope of the applicable regulations.

3. The Complainant asserted that the complaint is based on actual facts. The order passed by the CGRF lacks reasoning and the Complainant has thus approached the Ld. Ombudsman for redressing his grievance.

4. The Complainant submitted that the respondent has not produced any instance to prove the Complainant guilty of superssio veri falsus uno. The orders of the Forum have been attached with the representation and nothing has thus been concealed.

Rejoinder to Reply on Details of Grievance:

5. The Complainant submitted that the Respondents admits that there was a clerical error which was detected by check metering equipment on 05/08/2019. *The results of such check metering have still not been shared with the Complainant. The Complainant is not in a position to evaluate the correctness of the calculations in the absence of detail of claim, which was the duty of the Respondents to supply to the Complainant. Any further proceedings in the matter shall be vitiated by the fact that unless and until the detailed demand notice is provided to the consumer, how the Respondents can expect the realization of the sum of Rs. 39,60,562/-. It should have been the first action on the part of the Respondents to share the calculations before charging the sum to the energy bill issued by the Respondents.*

6. The Complainant submits that the Respondents have violated the procedure defined the rules and regulations. The Respondents were first required to raise a separate bill with

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details of the under billed amount and the procedure laid down in the Supply Code, 2009 has been contravened.

"5.2.5 (b) The bill for arrears, in case of underassessment or the charges levied as a result of checking etc., will be initially tendered separately, indicating in bill the nature, period of arrears, the number and amount of instalments allowed and the arrear will not be clubbed with the current electricity bill. Subsequently the amount of said arrear bill shall be reflected in the next billing cycle till not paid. For purpose(s) of action(s) of licensee on non-payment of billed amount, the arrear amount shall be accounted as per of final bill due of any billing cycle.

However in case any amount of the bill is disputed by the consumer, such disputed amount as well as the late payment surcharge thereon shall also be reflected, and continue to be reflected, separately in the ledgers, till such time such amount remains unpaid/ unsettled, so that total updated quantum of such disputed amount is readily available. Such details shall be made available to the consumer on request."

7. The Complainant submits that the in the present case, the dues were directly charged as Sundry Charges in the bill issued in August, 2019, which were shown payable by due date i.e. 30/08/2020. The Respondents further charged late payment surcharge of Rs. 77487.84 on this amount when not paid by the due date. *The action of the Respondents, who is a monopoly supplier of electricity in the area, were purely high headed and they expect the consumers to have a ready cash available to compensate for the mistakes committed by them.* The Respondents did not even care to mention the nature of Sundry Charges in the bill issued to the Complainant. The Respondents could have given to time to reconcile with the huge demand raised on the Complainant and should even have offered the payment of the same in installments rather than late payment surcharge on the disputed amount. Initially the said amount should have been transferred to the column of disputed amounts category when the Complainant failed to make the payment of the same as per procedure.

8. *The Complainant submits that the action of the respondent was purely coercive in nature and no coercive action is allowed as per section 56 for recovery of such arrears. Had such coercive action not taken, the Complainant may not have felt the need to approach the CGRF and Ld. Ombudsman in the matter. Fearing disconnection, the Complainant was left with no option than to approach the CGRF and then the Ld. Ombudsman. As per settled law, the Respondents were free to take recourse to any remedy available in law for recovery of additional demand.*

9. He further submits that this is a clear case of violation of rules and settled law, which has already been clearly stated in Para 9 of the judgement passed by the **Supreme Court in Civil Appeal No. 1672 of 2020** in the case of ***Ajmer Vidyut Vitran Nigam Limited & Anr. Versus Rahamatullah Khan alias Rahamajulla.***

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10. The Complainant submits that The Respondents have not contested the applicability of the Instruction No. 39.2 addressing the issue of limitation in the present case, which would mean their acceptance of its applicability.

11. The Complainant submits that the Sales Manual Instruction 26.4.1 only came into existence on 17/10/2017, whereas the claim is being paid since past several years prior to this instruction being notified by the Respondents. The said instructions cannot be applied retrospectively on the Complainant and the Complainant is eligible for the benefit for the past period.

12. The Complainant submits that the Respondents in their reply has stated there was 50% recording of energy consumed, whereas the arrears have been charged on the assumption that only 10% of the energy consumed has been recorded. The correctness of the claim of the Respondents is still under question and is not established. The Respondents have not contested to the applicability of Clause 5.6.2 of the Supply Code, 2009, which automatically stands accepted.

13. He further submits that the general statement given by the Respondents in the reply unless substantiated with evidence and reasoning does is meaningless. It is a fact that the bills issued by the Respondents was taken into account while calculating the cost of manufacturing of the products and the products already stand sold and no further recovery can be initiated from the past customers on the basis of additional demand raised by the Respondents.

14. The Complainant submits that the Respondents have agreed to an extent that no coercive action could have taken by them under the applicable law of limitation, whereas the actions of the Respondents are not matching to their statement in reply. The arrears in question were charged as sundry charges for which the due date was shown in the bill issued in the month of August, whereas the arrears were not categorized as disputed arrears, until and unless the consumer/ Complainant agreed to pay the same. However, the Complainant still sticks to his pleas and averments made in the complaint and the rejoinder claiming relief under limitation period.

15. The Complainant submits that the crucial points that have come up during the course of the reply and this rejoinder are:

    a) That the respondent contravened the provisions of para 5.2.5 (b) of the Supply Code, 2009 as no intimation of the arrears was tendered separately to the Complainant;

    b) That the Complainant still not have produced the detailed calculations /documents to support their claim of arrears. The results of check meter etc. have not been given to the Complainant so far, even after the proceedings before the CGRF. The CGRF also didn't go into the details of the claim of the Respondents, even though it was specifically mentioned in the complaint that the first intimation to the Complainant was in the form of energy bill. The matter also needs to be technically evaluated to

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support the Respondent's claim, before proceeding towards adjudication and judgement on the law points.

c) That the Respondents should have exercised other option available in law to him rather than taking coercive action. Had the Complainant not obtained the interim stay from the CGRF after deposit of one-third of the disputed amount, the Complainant's supply would have been disconnected immediately thereafter.

d) That the accountability of the concerned officer by whose error/ mistake such a lapse has occurred should not ignored and responsibility must be fixed so that discipline and adherence to the regulations is assured in future.

16. The Complainant submits that none of the issues of the present representation have been disposed by the reply filed by the Respondents. The Complainant has not implemented the Regulations in the manner they should have been. We, once again pray to the Ld. Ombudsman to grant relief as prayed in the complaint.

E- CGRF Order:

1. We have gone through the case file carefully and also heard the Learned Counsel of both parties. Regulation 26.4.1 of the Sales Manual reads as follows:-

   " In case of CT/PT meters where the accuracy of the meter is not involved and it is a case of incorrect connections, defective CTs/PTs genuine calculation and mistakes etc. charge would be adjusted in favour of the HPSEBL/ consumer as the case may be for the period the mistake/defect continued."

2. In view of the above Regulation, the Forum feels that the Respondent Board has rightly raised the above demand. The complaint is, therefore, rejected and the matter is decided in favour of the Respondent Board and against the Complainants.

F – Analysis of the Complaint:

1. The case file at Consumer Grievances Redressal Forum have also been requisitioned and gone through

2. The Complainant have been sanctioned a Connected Load of 98 kW at 11 kV and the said meter has been installed/ replaced by the Respondents on 20/09/2012. The Respondents during the month of August 2019 raised regular energy bill for the Complainant Company showing a sundry charge of Rs 39,60,562/- and no calculation to that effect has been shared with the Complainant. When left unpaid by the Complainant for want of detailed calculations and manner in which the sundry was demanded through regular energy bill

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instead of separate demand, they further showed the amount in the next energy bill for September as arrears including surcharge amounting to Rs 41,06,755/-.

3. The Respondents' submission is that when they were installing the check meter on 05/08/2019 in the presence of the Complainant's representative, it showed that the actual multiplying factor of the metering arrangement was 1 instead of 0.1 being charged and accordingly they corrected the clerical mistake and overhauled the Consumer's account and charged Rs 39,60,562/- through sundry charge in August 2019 bill itself.

4. Agitated by this demand shown in regular bills instead of through separate demand notice, the Complainant approached the Consumer Grievances Redressal Forum vide Complaint No. 1454/3/19/048, dated 24/09/2019 which was decided on 18/02/2020 in favour of the Respondents in accordance with clause 26.4.1 of the Sales Manual which states as under:

   " In case of CT/PT meters where the accuracy of the meter is not involved and it is a case of incorrect connections, defective CTs/PTs genuine calculation and mistakes etc. charge would be adjusted in favour of the HPSEBL/ consumer as the case may be for the period the mistake/defect continued."

5. Aggrieved by the orders dated 18/02/2020 by the Consumer Grievances Redressal Forum, the Complainant have filed the present complaint.

6. From the scrutiny of the Complaint, it emerges that the Complainant has never contested the amount being charged and even stated that had such coercive action not taken, he would not have felt the need to approach the CGRF and Ld Ombudsman in the matter. They are firstly agitated by the manner in which the demand has been raised in regular bills instead through separate demand. Secondly they are agitating the limitation of the demand being time barred under clause 39.2 of the Sales Manual 2017, Article 56 (2) of Electricity Act, 2003 and Clause 5.6.2 of the Supply Code, 2009.

7. Since the Complainant has not agitated the manner of calculation of Rs 39,60,562/- (Except demanding the detailed calculations) or even the wrong application of Multiplying Factor of 0.1 instead of 1, it can be concluded that the Complainant's only contention is the manner of presentation in the regular energy bill instead through separate demand and further the demand having time barred. The issue of original demand for Rs 39,60,562/- require no further discussions/ analysis and only these two issues is being discussed hereinafter.

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8. Now let us discuss first issue of clause 5.2.5 (b) of the Himachal Pradesh Electricity Supply Code, 2009 quoted by the Complainant for the manner in which the demand should have been raised separately initially in his rejoinder which states:

"The bill for arrears, in case of underassessment or the charges levied as a result of checking etc., will be initially tendered separately, indicating in bill of nature, period of arrears, the number and amount of installments allowed and the arrear will not be clubbed with the current electricity bill. Subsequently, the amount of said arrear bill shall be reflected in the next billing cycle till not paid. For the purpose(s) of action(s) of Licensee on non-payment of billed amount, the area amount shall be accounted as per final bill due of any billing cycle"

9. The Respondents have not adhered to the provisions under clause 5.2.5 (b) of Himachal Pradesh Electricity Supply Code, 2009. But does this mean that the demand made by the Respondents in regular energy bills instead of separate demand should be treated as unjust or illegal or arbitrary? In my considered opinion, the demand raised by the Respondents for correcting the application of the Multiplying Factor as 1 instead of 0.1 wrongly charged due to bonafide clerical mistake is correct. However, the manner in which the demand has been included in the regular energy bills for August 2019 on 15/08/2019 through Sundry Charges may not be proper but the same can't be interpreted as unjust, arbitrary and illegal and can't be just nullified. The detailed calculations should have been provided to the Complainant. The demand has further been shown as arrear in next energy bill issued in September 2019 with surcharge in line with the relevant provisions of the Rules/ Regulations/ Codes.

10. Now let us discuss the limitation issue. The Complainant has quoted following judgements in his support for limitation and interpretation of Article 56 (2) of Electricity Act, 2003 as given below:

    a) Judgement pronounced by the High Court of judicature at Bombay Civil Appellate jurisdiction adjudged by a three judge bench in the writ petition No. 10764 of 2011 in the case of Maharashtra state Electricity Distribution Company Ltd. versus the Electricity Ombudsman, Mumbai

    b) **Supreme Court in Civil Appeal No. 1672 of 2020** in the case of ***Ajmer Vidyut Vitran Nigam Limited & Anr. Versus Rahamatullah Khan alias Rahamajulla.***

11. Further the Complainant has quoted that the demand is time barred under Instruction 39.2 of the Sales Manual 2017 which states that

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"39.2 Limitation:

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

12. The Complainant has quoted Clause 5.6.2 of the Himachal Pradesh Electricity Supply Code, 2009 for limitation of demand being time barred which states

"5.6.2 Notwithstanding anything contained in any other law for the time being in force, no sum due from any consumer, under this Code shall be recoverable after the period of two years from the date when such sum become first due unless such sum has been shown continuously as recoverable as arrear of charges for electricity supplied."

13. I would rather rely on the judgment quoted by the Complainant in **Supreme Court in Civil Appeal No. 1672 of 2020** in the case of ***Ajmer Vidyut Vitran Nigam Limited & Anr. Versus Rahamatullah Khan alias Rahamajulla.*** This case is similar to case No. 13/2020 titled **M/S Indkus Biotech India, Village Mauja Rampur Jattan, District Sirmour, HP-173001 Vs HPSEB Ltd and others at HP Electricity Ombudsman** announced on 17/08/2020. The operative part of the above Supreme Court judgment is reproduced below ***specially para 8 & 9 onwards which states:***

"Para 8 - Section 56 (2) however, does not preclude the licensee Company from raising a supplementary demand after the expiry of the limitation period of two years. It only restricts the right of the licensee to disconnect electricity supply due to non-payment of dues after the period of limitation of two years has expired, nor does it restrict other modes of recovery which may be initiated by the licensee Company for recovery of a supplementary demand.

Para 9 -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.

<u>Section 56(2) did not preclude the licensee Company from raising an additional or supplementary demand after the expiry of the limitation period under Section 56 (2) in the case of a mistake or bona fide error.</u> *It did not however, empower the licensee*

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Company to take recourse to the coercive measure of disconnection of electricity supply, for recovery of the additional demand.

As per Section 17(1)(c) of the Limitation Act, 1963, in case of a mistake, the limitation period begins to run from the date when the mistake is discovered for the first time.

In Mahabir Kishore and Ors. v. State of Madhya Pradesh,5 this Court held that :–
5 (1989) 4 SCC 1. 19

"Section 17(1)(c) of the Limitation Act, 1963, provides that in the case of a suit for relief on the ground of mistake, the period of limitation does not begin to run until the plaintiff had discovered the mistake or could with reasonable diligence, have discovered it. In a case where payment has been made under a mistake of law as contrasted with a mistake of fact, generally the mistake become known to the party only when a court makes a declaration as to the invalidity of the law. Though a party could, with reasonable diligence, discover a mistake of fact even before a court makes a pronouncement, it is seldom that a person can, even with reasonable diligence, discover a mistake of law before a judgment adjudging the validity of the law."

(emphasis supplied)

In the present case, the ***period of limitation would commence from the date of discovery of the mistake i.e. 18.03.2014. The licensee Company may take recourse to any remedy available in law for recovery of the additional demand, but is barred from taking recourse to disconnection of supply of electricity under sub-section (2) of Section 56 of the Act.***

14. The Interpretation of the judgments above indicates that the limitation period starts only after the first demand is raised i.e. w.e. from 15/08/2019. And the recent clarification of the correct interpretation of the Article 56 (2) given in the judgment of the Supreme Court in **Civil Appeal No. 1672 of 2020** in the case of ***Ajmer Vidyut Vitran Nigam Limited & Anr. Versus Rahamatullah Khan alias Rahamajulla*** which states that ***Section 56(2) did not preclude the licensee Company from raising an additional or supplementary demand after the expiry of the limitation period under Section 56 (2) in the case of a mistake or bonafide error.*** It did not however, empower the licensee Company to take recourse to the coercive measure of disconnection of electricity supply, for recovery of the additional demand.

15. From one of the judgment quoted by the Complainant which is very much relevant to the case and recent, it is clear that period of limitation would commence from the date of discovery of the mistake and issue of first demand notice i.e. w.e from 15/08/2019 in this case. The Respondents may take recourse to any remedy available in law for recovery of the demand, but is barred from taking recourse to disconnection of supply of electricity under sub-section (2) of Section 56 of the Act. Further, Article 56 (2) did not preclude the Respondents from raising an additional or supplementary demand after the expiry of the

limitation period under Article 56 (2) in the case of a mistake or bona fide error. It did not however, empower the Respondents to take recourse to the coercive measure of disconnection of electricity supply, for recovery of the additional demand.

16. Further it states *the "**period of limitation would commence from the date of discovery of the mistake i.e. 18.03.2014. The licensee Company may take recourse to any remedy available in law for recovery of the additional demand, but is barred from taking recourse to disconnection of supply of electricity under sub-section (2) of Section 56 of the Act".*** In the present case the date of discovery of bonafide mistake was 05/08/2019 and the amount so worked out to correct the mistake of wrong application of the Multiplying Factor of 0.1 instead of 1 appeared was added as Sundry Charge in next energy bills issued on 15/08/2019.

17. Now comes the limitation clause 39.2 of the Sales Manual, 2017 and Clause 5.6.2 of the Supply Code 2009. Since both the clause are mere repetition of Article 56 (2) of the Electricity Act, 2003 and incorporated in the Sales Manual, 2017 and Supply Code 2009, these clauses require no further interpretation.

18. Cause 26.4.1 of the Sales Manual, on which the CGRF have relied while deciding the case, states:

    " In case of CT/PT meters where the accuracy of the meter is not involved and it is a case of incorrect connections, defective CTs/PTs genuine calculation and mistakes etc. charge would be adjusted in favour of the HPSEBL/ consumer as the case may be for the period the mistake/defect continued."

19. The Respondents discovered the mistake while installing the check meter on 05/08/2019 that the Multiplying Factor of 0.1 was being used instead of 1 and the Complainant was being under charged for the energy consumed. This was a bonafide clerical mistake by the Respondents and is also fully covered under clause 26.4.1 of the Sales Manual 2017. The Complainant's contention that Sales Manual 2017 can't be applied retrospectively does not holds good since the mistake has been discovered by the Respondents on 05/08/2019 and is within the provisions of the said manual issued on 17/10/2017.

20. The first demand was raised by the Respondents in energy bill for August 2019 on 15/08/2019 and when left unpaid by the Complainant, appeared as arrears in the energy bills for September 2019 with surcharge. The Complainant submitted its complaint at Consumer Grievances Redressal Forum in September 2019 itself and now the matter is before the Electricity Ombudsman for adjudication.

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21. The electricity connection to the Complainant is still operative and have not been disconnected by the Respondents specifically on the Interim Orders of the Consumer Grievances Redressal Forum dated 24/09/2019. Thus there is no threat present to the Complainant that his electricity connection shall be disconnected due to non-payment of the arrears. The Complainant has itself admitted that the Respondents have agreed to an extent that no coercive action shall be taken.

22. The Complainant's application at Electricity Ombudsman is well within his right under regulation 28 (b) of the Himachal Pradesh Electricity Regulatory Commission (Consumer Grievances Redressal Forum and Ombudsman) Regulations, 2013 and he has exhausted preliminary channel at Consumer Grievances Redressal Forum before coming to Electricity Ombudsman.

23. The Complainant's contention that the Consumer Grievances Redressal Forum has not applied the same principle as in their order dated 13/11/2018 wherein they had observed that the Respondents can only recover arrears for a period of two years as per Section 56 (2) of the Electricity Act, 2003 and the Complainant is entitled to similar relief in the matter also does not hold good since the orders dated 13/11/2018 has already been quashed and set aside by HP Electricity Ombudsman in Case No. 13/2020 titled **M/S Indkus Biotech India, Village Mauja Rampur Jattan, District Sirmour, HP-173001 Vs HPSEB Ltd and others at HP Electricity Ombudsman** announced on 17/08/2020.

G - Issues in Question: From the above discussions and analysis, the following issues emerges

1. **Issue No. 1:** Whether the demand raised by the Respondents in regular energy bills through Sundry Charges instead of separate demand in view of clause 5.2.5 (b) of the Himachal Pradesh Electricity Supply Code, 2009 is unjust, arbitrary and illegal?

2. **Issue No. 2:** Whether the demand has been hit by limitation under Article 56 (2) of Electricity Act, 2003, 39.2 of the Sales Manual 2017 and Clause 5.6.2 of Himachal Pradesh Electricity Supply Code, 2009?

3. **Issue No. 3:** Whether the orders passed by the Consumer Grievances Redressal Forum on dated 18/02/2020 in Complaint No. 1454/3/19/048, dated 24/09/2019 are correct?

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H – Findings on issues:

Issue No.1

1. As is evident from the analysis above, the demand raised by the Respondents in regular energy bills issued on 15/08/2019 is well within the provisions of clause 26.4.1 of the Sales Manual 2017 and mere representation of same through Sundry Charges in energy bill for August 2019 instead through separate demand in line with clause 5.2.5 (b) of Himachal Pradesh Electricity Supply Code, 2009 doesn't nullifies the same. However, the detailed calculations should have been provided at the first instance by the Respondent Board or even at the time of demand for same by the Complainant on 17/09/2019.

Issue No. 2:

1. As is evident from the analysis above and specially the judgment of the Supreme Court in **Civil Appeal No. 1672 of 2020** in the case of ***Ajmer Vidyut Vitran Nigam Limited & Anr. Versus Rahamatullah Khan alias Rahamajulla,*** and considering the period of litigation at Consumer Grievances Redressal Forum and HP Electricity Ombudsman, the demand is not hit by the limitation under Article 56 (2) of Electricity Act, 2003, Clause 39.2 of the Sales Manual and Clause 5.6.2 of Himachal Pradesh Electricity Supply Code, 2009.

Issue No. 3:

1. As is evident from the analysis above and outcome of Issue No. 1 & 2, the orders passed by the Consumer Grievances Redressal Forum on dated 18/02/2020 in Complaint No. 1454/3/19/048, dated 24/09/2019 are correct to certain extent although are not detailed with reasoning. The CGRF have also not touched the issue of limitation as well as manner of presentation of the demand through Sundry Charges instead of separate demand notice.

I – Order:

1. **The orders passed by Consumer Grievances Redressal Forum on dated 18/02/2020 in Complaint No. 1454/3/19/048, dated 24/09/2019 are upheld and modified to the following extent:**

   a) **The demand raised by the Respondent No. 2 amounting to Rs 39,60,562/- issued through Sundry Charges in energy bills for August 2019 issued on 15/08/2019 on wrong application of multiplication factor of 0.1 instead of 1 is upheld to be correct in line with Clause 26.4.1 of the Sales Manual 2017.**

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b) The Respondents are directed to issue the updated amount through separate demand notice at first instance and if left unpaid, to show in next energy bills onwards till finally paid.

c) The detailed updated calculations may also be provided to the Complainant by Respondent No. 2.

2. The Respondents are directed to recover the amount assessed on wrong multiplication of the Multiplying factor duly updated in accordance with relevant provisions of Rules, Supply Code 2009, Sales Manual and Regulations.

3. The amount deposited by the Complainant up to a level of 50% of the disputed amount, if any with the Respondents may be adjusted accordingly.

4. No cost to litigation.

Issued under my hand and Seal of the Office.

Ombudsman H.P. Electricity Khalini, Shimla-2

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