



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 Pashupati Spinning and Weaving Mills, Village Trilokpura Road, Kala Amb, District Sirmour, HP-173030
– Complainant

Vs

1. Executive Director (Personal), HPSEB Ltd, Vidyut Bhawan, Shimla-171004
2. Superintending Engineer, HPSEB Limited, Nahan, District Sirmour, HP-173001
3. Sr Executive Engineer (E), Electrical Division, HPSEB Ltd, Nahan, District Sirmour HP 173001
4. Assistant Engineer (E), Electrical Sub-Division, HPSEBL, Kala Amb, District Sirmour HP-173030

- Respondents

Complaint No.: 21/2020, Registered on 12/06/2020
(Decided on 13/10/2020)

CORAM

K L Gupta
HP Electricity Ombudsman

Counsel for:

Complainant: Sh. Rahul Mahajan, Advocate
Respondent: Mr Anil Kumar God, Advocate

Order

The Complaint was registered on 12/06/2020 and listed for 18/07/2020. Since the Respondents sought time to file the reply, the case was further listed for 22/08/2020. Again the reply was not submitted by the Respondents and were given time till 29/08/2020 and rejoinder by 05/09/2020. Respondents submitted their reply on 05/09/2020 and case was listed for final arguments on 26/09/2020. Both parties were directed to file their written arguments on or before 09/10/2020. Hence the delay.

A – Brief facts of the case:

1. M/S Pashupati Spinning and Weaving Mills, Village Trilokpura Road, Kala Amb, District Sirmour, HP-173030 has filed an application through Sh. Rajesh Gupta (Hereinafter called



Leapt
13/10/2020



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as 'the Complainant') under regulation 28 of Himachal Pradesh Electricity Regulatory Commission (Consumer Grievances Redressal Forum and Ombudsman) Regulations, 2013 against the orders passed on 22/01/2020 by the Consumer Grievances Redressal Forum in Review Appeal No. 1515/1/19/003 in Original appeal No. 1515405024 of 2005, dated 11/02/2019.

2. The Complainant also appealed to stay the operation & execution of the orders dated 22/01/2020 alongwith notice by Respondent No. 4 dated 15/10/2005 for recovery of surcharge on PLVC amounting to Rs 20,98,670/-. The Complainant further requested for condonation of 63 days delay for filing the application at Electricity Ombudsman. The delay was accepted and granted vide Interim Orders dated 18/07/2020.

B – The Complainant's Submissions:

1. The Complainant submits that the Appellant Company is a Consumer under the Electricity Act and Himachal Pradesh Electricity Regulatory Commission (Consumer Grievances Redressal Forum and Ombudsman) Regulations, 2013. He has a sanctioned Connected Load of 4500 kVA and Contract Demand of 3500 kVA as of May, 2020. In 1998, the Connected Load of the Appellant Company was 713 kVA and Contract Demand of 713 kVA. HPSEB Limited/ Respondents/ Distribution Licensee released energy bills, wherein they incorporated charges towards peak load violation amounting to Rs. 12,33,422/- for the month of February, March, April, May, September and October, 1998. The Appellant Company filed Civil Suit for injunction before the Ld. Civil Judge (Senior Division) Sirmour at Nahan against the recovery towards the peak load violation charges levied by the Distribution Licensee/ Respondents. The Ld. Civil Judge (Senior Division) Sirmour at Nahan granted interim relief and directed the Appellant Company to have its claim adjudicated before Zonal Level Disputes Settlement Committee. The Civil Judge (Senior Division) Sirmour at Nahan also further observed that till the Zonal Level Settlement Committee does not decide the case, the interim order dated 04/07/1998 shall remain in force. The Ld. Civil Judge (Senior Division) Sirmour at Nahan consigned the suit to record room with liberty to revive the same on the application of the Appellant Company and the Distribution Licensees.
2. He further submits that the Zonal Level Settlement Committee upheld the Peak Load Violation charges levied by HPSEB Limited/ Distribution Licensee for the month of February, March, April, May, September and October, 1998 amounting to Rs. 12,33,552.65 and also further held that as per letter dated 27/10/1997, issued by the Chief Engineer Commercial HPSEB Limited, the petitioner is liable to pay 2% surcharge to be compounded on the unpaid amount. The Appellant Company approached the Board Level Settlement Committee which upheld the order of the Zonal Level Settlement



Page 2 of 32
Accepted
13/10/2020



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- Committee in view of clause 18 (c) of the Abridged Condition of supply of HPSEB Sale Manual and dismissed the appeal. The Appellant Company thereafter approached the Principle Secretary (Power) to the Government of H.P. against the order of the Board level Settlement Committee. The Principle Secretary (Power) to the Government of H.P. upheld the order of the Board Level Settlement Committee dated 12/09/2002. The Appellant Company thereafter filed Complaint No. 1515/40/5024 of 2005 before the Forum for Redressal of Grievances of HPSEB Consumer on the ground that the Principle Secretary (Power) to the Government of H.P. has no jurisdiction to pass order dated 27/08/2005. The Ld. Forum for Redressal of Grievances of HPSEB Consumer did not find favour and disposed of the Complaint as not maintainable.
3. The Complainant submits that the Respondents/ Distribution Licensee issued letter/ notice dated 15/10/2005 levying surcharge @ 2% on an amount of Rs. 12,33,552.65 and levied to the same to the tune of Rs. 20,98,670/- for delayed payment. The Appellant Company against the said order filed CWP No. 94 of 2006 before the Hon'ble High court of H.P. against the Respondents for levy of Peak Load violation Charges as well as surcharge @ 2% on an amount of Rs. 12,33,522/- Peak Load violation charges. Vide order dated 20/06/2018, the said writ petition was withdrawn with liberty to approach Ld. Forum for Redressal of Grievances of HPSEB Consumer, Kasumpti, Shimla. Thereafter the order dated 08/01/2019 passed in CWP No. 94 of 2016, extending the time to file the Complaint before the Ld. Forum for Redressal of Grievances of HPSEB Consumer, Kasumpti, Shimla-9. He further submits that the Appellant Company thereafter filed Consumer Complaint No. (RA 1515/A/19/003 in O.A No. 1515405024 of 2005 titled as M/s Pasupati Spinning and Weaving Mills Vs. Executive Director, HPSEB limited & others before the Ld. Forum for Redressal of Grievances of HPSEB Consumer, Kasumpti, Shimla-9.
4. The Complainant submits that the Ld. Forum for Redressal of Grievance of HPSEB Consumer has dismissed the Complaint No. RA 1515/1/19/003 in O.A. NO.1515405024 of 2005 titled as M/s Pasupati spinning and Weaving Mills Vs. Executive Director, HPSEB limited & other vide order dated 23/01/2020 and has held the Appellant Company is liable to make a payment of Rs. 20,98,670/- i.e. 2% surcharge on an account of Rs. 12,33,522/- Peak Load violation Charges to the Respondents/ Distribution Licensee without going into the detailed calculations. The Appellant Company is feeling aggrieved and dis-satisfied against the order dated 22/01/2020 passed in Complaint No. (RA 1515/1/19/003 in O.A No. 1515405024 of 2005 titled as M/s Pasupati Spinning and Weaving Mills Vs. Executive Director, HPSEB Limited & others is filling the present appeal/ representation inter-alia on the following amongst other grounds:-



Leupte
13/10/2020 Page 3 of 32



HIMACHAL PRADESH ELECTRICITY OMBUDSMAN
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- a) That the order dated 22/01/2020 passed in Complaint No. (RA 1515/1/19/003 IN O.A No. 1515405024 of 2005 titled as M/s Pasupati Spinning and Weaving Mills Vs. Executive Director, HPSEB Limited & other by the Ld. Forum for Redressal of Grievances of HPSEB Consumer, Kasumpti, Shimla (Hereinafter referred to as the impugned order of the Ld. Forum below) is bad in law, suffers from material irregularity and illegality, non-appreciation of the provisions of Electricity Act; guidelines of the Abridged Condition of supply of HPSEB Sale Manual and Himachal Pradesh Electricity Regulatory Commission (Consumer Grievances Redressal Forum and Ombudsman) Regulation, 2013. Non- consideration and non-appreciation of the same has resulted in error of law apparent on the face of the record. Thus the order dated 23/01/2020 ought to be quashed and set aside.
- b) That the impugned order dated 22/01/2020 passed by the Ld. Forum below is also bad in law as the Ld. Forum below has failed to address the points raised by the Appellant Company in its Complaint filed by the Ld. Forum below. Vague and cryptic order has been passed without and reasons. Provisions of regulation 26 (4) of Himachal Pradesh Electricity Regulatory Commission (Consumer Grievances Redressal Forum and Ombudsman) Regulations, 2013 have not been appreciated in its proper perspective which imposes an obligation to the Ld. Forum to pass a reasoned orders. Further the Hon'ble Apex Court has held that quasi- judicial and judicial authority should passed reasoned and speaking orders. Thus the order dated 22/01/2020 is bad in law, deserves to be quashed and set aside.
- c) That the impugned order dated 22/01/2020 passed by the Ld. Forum below is also bad in law as the Ld. Forum below has only dealt with the aspect of surcharge levied and not the aspect of Peak Load Violation Charges. The Appellant Company had submitted that Peak load violation charges of Rs. 12,33,422/- charged for the month of February, March, April, May, September and October 1998 were totally wrong, incorrect and contrary to the rules and regulations as well as Abridged condition of Supply of HPSEB Sales Manual. The Ld. Forum below firstly should have adjudicated upon the validity of levy of Peak Load Violation Charges and thereafter only should have given a finding on levy of surcharge. The Ld. Forum below by not giving a finding whether Peak Load Violation Charges were rightly or wrongly levied has failed to decide the Complaint in a just and proper manner, which has resulted in prejudiced to the Appellant Company and error of law apparent on the face of the record. The Ld. Forum below firstly without adjudicating whether Peak Load Violation charges wrongly or rightly levied could not have adjudicated on levy of surcharge. The said is against the canon of jurisprudence and the order dated 22/01/2020 ought to be quashed and set aside.



Leapt
13/10/2020



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- d) That the impugned order dated 22/01/2020 passed by the Ld. Forum below is also bad in law and ought to be quashed and set aside as the Ld. Forum has failed to appreciate the instruction Nos. 131, 168 and 180 of the Sales Manual. Non-appreciation of the said instructions has resulted in passing of wrong order. Thus there is an error apparent on the face of the record and non-appreciation of the provisions of Sales Manual. The Peak Load Violation Charges as well as surcharge has wrongly been levied. Even the Zonal Level Settlement Committee and Board Level Settlement Committee was not properly constituted as per instruction No. 168 of the Sales Manual and thus order passed by them are void ab initio. It is further contested that the CGRF has relied on Schedule of General and service Charges, which only came into existence and was notified for the first time by HPERC in Nov. 2001. There was no such schedule which the Forum has referred to prior to Nov. 2001. The case of the Appellant is pertaining to the period prior to 2001. Therefore, the reliance of the CGRF on this schedule is misplace and unjustified while passing the orders. Schedule of General and Service Charges cannot have a retrospective effect. Thus, the order dated 22/01/2020 is bad in law ought to be quashed and set aside.
- e) That the impugned order dated 22/ 01/2020 passed by the Ld. Forum below is also bad in law as the Ld. Forum below have failed to appreciate the provisions of Section 56 of the Electricity Act, 2003, Section 61 and 60-A of the Electricity Supply Act, 1948. Law laid down by HC of Bombay in WP No 10764/11 and other connected matters decided on 12/03/2019 has been brushed aside and ignored. Wrong appreciation of the same has resulted in wrong findings and thus the order dated 22/01/2020 is bad in law, ought to be quashed and set aside.
- f) That the impugned order dated 22/01/2020 passed by the Ld. Forum below is also bad in law ought to be quashed and set aside, as the Ld. Forum below has failed to appreciate that the payment of Rs. 12,33,422/- was made in terms of the orders passed by the Ld. Civil Judge (Senior Division) Sirmour at Nahan and the Hon'ble High Court of H.P. in C.M.P. (M) No. 1,2 & 3 of 2001 titled as Pashupati Spinning and weaving Mills vs. HPSEB limited and others. The detail of payment made are enumerated herein below:-



Sr. No.	Receipt No.	Date of payment	Amount
1.	223317	16/06/2001	Rs. 50,000/-
2.	223318	16/06/2001	Rs. 25,000/-
3.	223319	16/06/2001	Rs. 25,000/-
4.	19696	24/07/2001	Rs. 50,000/-
5.	19697	24/07/2001	Rs. 25,000/-

Receipt
13/10/2020



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6.	19698	24/07/2001	Rs. 25,000/-
7.	32639	01/09/2001	Rs. 50,000/-
8.	32640	01/09/2001	Rs. 25,000/-
9.	32641	01/09/2001	Rs. 25,000/-
10.	999942	31/10/2001	Rs. 50,000/-
11.	999943	31/10/2001	Rs. 25,000/-
12.	999944	31/10/2001	Rs. 25,000/-
13.	1001481	06/12/2001	Rs. 50,000/-
14.	1001482	06/12/2001	Rs. 25,000/-
15.	1001483	06/12/2001	Rs. 25,000/-
16.	1110563	30/03/2002	Rs. 50,000/-
17.	1110564	30/03/2002	Rs. 25,000/-
18.	1110565	30/03/2002	Rs. 25,000/-
19.	397029	31/03/2002	Rs. 50,000/-
20.	397030	31/03/2002	Rs. 25,000/-
21.	397031	31/03/2002	Rs. 25,000/-
22.	1007902	28/02/2002	Rs. 50,000/-
23.	1007903	28/02/2002	Rs. 25,000/-
24.	1007904	28/02/2002	Rs. 25,000/-
25.	281861	19/11/2004	Rs. 4,33,422/-
Total			Rs. 12,33,422.00

g) That when the payments were made in terms of the order passed by the Ld. Civil Judge (Senior Division) Sirmour at Nahan as well as Hon'ble high Court of H.P., the said orders was passed in the presence of Distribution Licensee/ HPSEB Limited, the Zonal Level Settlement Committee/ Board level Settlement Committee as well as principal Secretary (Power) to the Government of H.P. could not have in order imposed 2% surcharge on an amount of Rs. 12,33,522/-. Further the Appellant Company had only challenged the imposition of Peak Load Violation Charges levied by HPSEB Limited/ Distribution Licensee for the month of February, March, April, May, September and October, 1998 amounting to Rs. 12,33,552.65/- and of its own the Zonal Level Settlement Committee/ Board Level Settlement Committee as well as Principal Secretary (Power) to the Government of H.P. could not have said the Appellant Company is liable to pay surcharge. HPSEB/ Distribution license had never approached the Zonal Level Settlement Committee/ Board Level Settlement Committee as well as Principal Secretary (Power) to the Government of H.P. for levy of Peak Load Violation Charges. The said has not been appreciated in its proper and true perspective. Thus the order dated 22/01/2020 is bad in law ought to be quashed and set aside.

h) That the order dated 22/01/2020 passed by the Ld. Forum below is also bad in law as the Ld. Forum below is harsh, unjust and oppressive and thus the findings qua



Leapt
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levying of surcharge @ 2% on an amount of Rs. 12,33,522.65 ought to be quashed and set aside as the Ld. Forum below has failed to appreciate the provisions of Sales Manual as well as Himachal Pradesh Electricity Regulatory Commission (Consumer Grievances Redressal Forum and Ombudsman) Regulations, 2013. Notice dated 15/10/2005 issued by Respondent/ Distribution Licensee No 4 is bad violative of Article 14 of Constitution of India as no opportunity was given to Appellant Company before it was issued and further it was been issued only in term of order passed by Zonal Level Settlement Committee/ Board Level Settlement Committee as well as Principal Secretary (Power) to the Government of H.P which are vio ab initio. Thus the order is bad in law, ought to be quashed and set aside.

- i) That the impugned order dated 22/01/2020 passed by the Ld. Forum below is also bad in law as the Ld. Forum below is harsh, unjust and oppressive and thus the findings qua levying of surcharge @ 2% on an amount of Rs. 12,33,522.65 ought to be quashed and set aside as in this particular dispute the Appellant had been directed to file the disputes from one court/ Forum/ Committee to the other and the matter has been considerably delayed for over 20 years without any fault on his part. Had the question of late payment surcharge been raised well in time the Appellant would have paid the same in those years, when he was paying the instalments of the principal amount till 2004. Thus the order is bad in law, ought to be quashed and set aside.
- j) That the order dated 22/01/2020 passed by the Ld. Forum below is also bad in law as the Ld. Forum below is harsh, unjust and oppressive and thus the findings qua levying of surcharge @ 2% on an amount of Rs. 12,33,522.65 ought to be quashed and set aside as the Ld. CGRF has passed the orders without going into the actual calculations of the late payment surcharge. The Appellant on his own had carried out some rough calculation, by which he could only reach a figure of Rs. 17,76,273/- without factoring in the instalments paid by the Appellant in between. The calculations of late payment surcharge are incorrect and are on very high side and the methodology of the calculations must be looked into before adjudicating the matter of late payment surcharge. The above ground has been raised by Appellant without conceding that the order dated 22/01/2020 passed by the Ld. Forum below is bad and ought to be quashed and set aside thus the order is bad in law, ought to be quashed and set aside.
- k) The Complainant prayed to allow the appeal in the interest of law and justice and for following reliefs:- a) to quash and set aside the order 22/01/2020 passed in Complaint No.(RA 1515/A/19/003 in O.A. No. 1515405024 of 2005 titled as M/s Pasupati Spinning and Weaving Mills Vs. Executive Director, HPSEB Limited & others



Leupte
13/10/2020



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by the Ld. Forum for Redressal of Grievances of HPSEB Consumer, Kasumpti Shimla; b) to Quash and set aside the letter/ notice dated 15/10/2005 issued by the Assistant Executive Engineer, Electrical Sub-Division, HPSEB Limited Kala Amb, District Sirmour H.P.; c) call for the record of the case; d) any or further orders which this Hon'ble Commission may deem fit and proper in the facts and circumstances of the case may kindly be passed in favour of the Appellant and against the Respondents/ Distribution Licensee.

C – The Respondents' Submissions:

1. The Respondents submits that the Complainant has nowhere challenged the competency of the Jurisdiction of the Principal Secretary Power in any proceeding before filing the Complaint No. 1515/40/5024 of 2005. Whereas objections as to Jurisdiction has to be raised at the earlier possible and at the very beginning of the proceeding in question. In the instant case also the Complainant after having been failed to get favorable order had raised the question of Jurisdiction which is not sustainable and the order passed by the Forum below is just and proper and deserves to be affirmed & upheld in the facts & circumstances of the case.
2. The Respondents submits that the order passed by the Ld. Forum below is based on due & proper appreciation of the pleadings of the parties, material placed/ brought on record and warrants no interference of this Hon'ble Court and the order passed by the Ld. CGRF is deserves to be upheld. The outstanding amount are two sides of the same coin and cannot be considered in isolation of each other and the surcharge for the late payment has rightly been levied by the Respondent Board in accordance with tariff/ rules as such the Complaint is not maintainable and same is liable to be dismissed.
3. They submitted that during February 1998 to October 1998 the Complainant was not having any permission to run its industry during peak hours and Complainant violated peak load hours restriction in the aforesaid months. Therefore the replying Respondents has raised the bill to the Complainant charging for peak load hours violation. It is pertinent to mention here that the matter was decided by the Zonal Level Dispute Settlement Committee vide order dated 31/03/1999. The order passed by the Zonal Level Dispute Settlement Committee was upheld by BLDC & the Secretary MPP & Power. The Complainant had also approached the Hon'ble Civil Judge senior Division and had filed a Civil Suit against the HPSEBL. The Complainant also approached the Hon'ble High Court of HP but no relief had been given to the Complainant and as per various directions issued by the Courts. The amount of Rs. 12,33,522/- only was deposited by the Complainant up to 2004 without any late payment surcharge. Later on as per the decision of ZLDC HPSEB, in the year 2005, the HPSEBL issued a demand notice to Complainant on account of 2% surcharge amounting to Rs. 20.98 Lacs w.e.f. 10/1998 to



Leup to
13/10/2020



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4/2003 vide letter dated 15/10/2005. After receipt of the notice, the Complainant approached the Hon'ble High Court by way of CWP and the Hon'ble High Court of HP had stayed the recovery of the late payment surcharge as is raised by the HPSEBL. The Complainant had deposited only Rs. 6 lacs in two instalments during Feb & March 2006. It is further submitted that there was nothing illegal in the communication dated 15/10/2005 issued by the replying Respondents as the Complainant was very much aware that his industry was running during peak hours and the Complainant had committed violation of peak load hours restriction and therefore the penalty in the form of peak load violation contract and demand charges were imposed upon the Complainant for running its industry during peak hours without having any permission to run his industry during peak hours. When the Complainant failed to deposit the peak load hours restriction violation charges and replying Respondents were left with no other option except to issue demand notice of Rs. 20.98/- lakh by leaving the statutory 2% surcharge which was to be deposited within 15 days from the date of notice as per rules and regulations. The Ld. Forum has rightly passed the order dated 22/01/2020 in review application as no new ground or on error on the face of record was found by the Ld. Forum below, and, a well- reasoned speaking order had been passed on the basis of the record placed before the Ld. Forum. The Complainant has been charged for actual consumption during peak hours and surcharge applicable thereon. The Complainant is liable to make the payment of the late payment surcharge as the Complainant had not made the payment of the demand notice when it becomes due rather its payment had been made in instalment and the Complainant is liable to make the payment of the late payment surcharge on the amount which remain outstanding and the amount of Rs. 20,98,670/- charged by the replying Respondents is legally justified and is in accordance with the regulation of the Sale Manual & other Regulations. The Complaint and review application of the Complainant were decided by the Hon'ble Forum below by passing a well- reasoned speaking order in Complaint No. 1515/40/024 of 2005 decided on 03/06/2006. The Review application has also been filed by the Complainant on the same ground thereby disputing the demand notice raised by the replying Respondents for a sum of Rs. 20.98 Lacs and no new ground has been made out in the review application nor any error apparent on the face of record brought on the notice of the Ld. CGRF and same was rightly dismissed by the Ld. CGRF. They further submitted that so far as the objections of the Complainant relating to the Constitution and Jurisdiction of the Zonal Level Settlement Committee and Board Level Dispute Settlement Committee is concerned same has been set aside by the Hon'ble High Court of HP in its judgment rendered in CMPMO No. 3/2001,02/2001 and 1/2001 decided on 14/03/2003 and had held that the Complainant is not entitled to raise the question of constitution and jurisdiction of the Zonal Level Settlement Committee and Board Level Dispute Settlement Committee at this belated stage that too when the parties have subjected themselves to their jurisdiction and the order has been passed against the Complainant.



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13/10/2020



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They submitted that the Complainant had not raised this objection before the Zonal Level Settlement Committee and Board Level Dispute Settlement Committee or even before the Secretary to MPP to the Govt. of HP when the claim of the Complainant was being tried and adjudicated by the respective authorities, further the dispute was sent to the committee with the consent of the Complainant. It is also a settled law that the objection as to the jurisdiction has to be taken at the earliest possible opportunity and same is not allowed to be raised in the appeal. The orders passed by the Zonal Level Settlement Committee, Board Level Dispute Settlement Committee, the Principal Secretary to the Govt. of HP and by this Hon'ble Forum are based on the record and the Complainant has not made out any new case which will warrants the interference of this Hon'ble Court. The Complainant was found violating peak load hour restriction violation and the demand notice had rightly been raised by the replying Respondents. The Complainant has consumed energy during peak load hour restriction in excess of 300 units many times during the aforesaid period so the Complainant as per Clause 18 (C) of Abridge Condition of Supply is liable to pay the peak load hour restriction violations charges as per the agreement executed by the Complainant with the replying Respondents. It is further submitted that during the surprise inspection of the premise of the Complainant by the officer of the respondent board on 17/03/1998, it was found that the factory and machinery of the Complainant were running during peak load hours. Subsequently as prescribed in the rules the connection of the Complainant was disconnected for the above violations and it was only reconnected after obtaining undertaking in writing, not to run the factory in further during peak load hours and recovering reconnection charges, from the Complainant. Accordingly as per clause 18 (c) of the Abridge Condition of Supply, the peak load hour violations charges on this account were levied. However, it is made clear that vide letter 20/03/1998 written by the Complainant to the replying Respondents it was admitted that its industry was running during peak load hour and therefore peak load hours restriction charge have been levied against the Complainant. It means that the Complainant was running its industry during peak hours in excess of agreed unit i.e 300 units. In support of the claim regarding the peak load hour violation committed by the Complainant, the replying Respondents had submitted a copy of log sheet of 132 kV Sub-Station Kala Amb indicating the hourly consumption recorded on 33 kV Pashupati Feeder feeding power to the Complainant, in which there is excess consumption of electricity as compared to sanction load i.e 300 Units per hours on said dates and the Complainant was required to restrict the use of electricity during peak load hours. The Consumer has to strictly abide by the peak load hours or such other restriction as may be in force in the HPSEBL from time to time. So the Complainant was not allowed to run his industry during peak load hours. However, as per the notification issued by the Respondent Board, following load shall be excluded while quantifying peak load hours and no peak load exemption charge shall be livable on these loads:-



Leup to
13/10/2020



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- a) Lighting load of industry
- b) Yard lighting load of industry
- c) Colony lighting load of industrial residential quarters

4. The Respondents submits that in light of the notification, the Complainant can consume up to 284 units per hours for lighting purpose of the industry/ residential quarter during peak load period. The Complainant was getting supply from 33 kV dedicated feeder from 132kV Sub-Station Kala Amb and all metering equipment etc. were installed in the premise of the sub-station. The replying Respondents were recording hourly and half hourly reading on the meters installed there and the recording the same in the log sheet maintained for this purpose. The energy meter installed in the premises of the Complainant was the multiple of 100 units. However, in case the consumption of the Complainant exceeds 300 unit during peak load hours, peak load hours violations charges shall be levied accordingly. They specifically denied that the demand of Rs. 20.98 lakh raised by the Respondents on account of 2% late payment surcharge is without any basis or legal sanctity. They further submitted that the peak load hour violation charges amounting to Rs. 12,33,522.25 has not been paid by the Complainant at once or when it became due and had deposited the same in instalments and therefore as per the provision of tariff rules, the Complainant had been charged @ 2% late payment surcharge on the amount which was unpaid and outstanding. It is pertinent to mention here that the Complainant deposited the peak load violation charges in different years as is evident from the table drawn by the Complainant in its representation and therefore the late payment surcharge which was unpaid again it has been charged @ 2% late payment surcharge on unpaid late payment surcharge. The provisions of instruction No. 131 of the Sales Manual are not attracted in the present case. It is, however, made clear in this instruction that surcharge will be lived on unpaid due and the Respondents had rightly imposed 2% late payment surcharge upon the Complainant. In instant case, huge public money is involved and the Complainant has to pay public dues to the replying Respondents since the electricity was consumed by the Complainant, the instruction No. 131, 168 and 180 of Sales Manual as cited by the Complainant are not attracted in the present case. They submitted that this matter has been transferred to the Zonal Level Dispute Settlement Committee by the Senior Civil Judge, Nahan and therefore it was the duty of the Zonal Level Dispute Settlement Committee to decide the matter in accordance with the law. At this stage, the constitution of the Zonal Level Dispute Settlement Committee cannot be taken into consideration. The Complainant has not challenged this fact before the Hon'ble High Court of HP and now this fact cannot be seen while disposing of the representation by this Hon'ble Forum. The Complainant has withdrawn his writ petition on the grounds that he wants to approach the appropriate Forum to redress his grievances. This Forum has no jurisdiction to adjudicate on the



Heupto
13/10/2020



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question of the constitution of the Zonal level Dispute Settlement Committee as per instruction 168 of Sales manual as the same has been set at rest by the Hon'ble High Court of HP in CMPMO No. 2 of 2001 as already submitted supra. The Complainant had not even agitated this ground before the Hon'ble High Court of HP while withdrawing his writ petition and therefore the Complainant is stopped from its acts, deeds and conduct and acquiescence to raise any question as to the jurisdiction at this stage. The Respondents submitted that they had issued monthly bills to the Complainant and shown the energy consumption in the monthly bill and it is evident from these energy bill that the Complainant used its units during peak hours and used excess of load than that allowed to the Complainant. The Complainant has neither assailed these energy bills before the officers of the Respondents nor before any court which means that the Complainant was fully satisfied regarding the issuance of energy bills. So far as the levying of late payment surcharge is concerned this is the unpaid dues of the Respondents, since, the Complainant failed to deposit the peak load violation charge when it became due and made its parts payment and in these circumstances, the Respondents were having no other option except to charge 2% late payment surcharge on unpaid dues and the replying Respondents have no authority to waive off the late payment surcharge. Section 76 of the Electricity Act is also attracted in the present case. Section 61 (a) of the Electricity Supply Act is also not applicable in the present case. The Respondents submitted that they raised the demand of Rs. 12,33,522.25 on account of peak load hour restriction violation and after that when the Complainant failed to deposit this amount, the replying Respondents issued demand notice to the Complainant to the tune of Rs. 20.98/- Lakh on account of late payment surcharge on the outstanding amount. The period of limitation will not be applicable in the present case since the matter was pending before the various courts and therefore the Complainant is trying to take benefits of its own wrongs. As per the pleading of the Complainant, it is clear that when the first time the Respondents raised demand from the Complainant he approached the Ld. Civil Court and the matter was pending before the Civil Judge, thereafter the Complainant approached the Hon'ble High Court of HP two time and the matter was also adjudicated before the Zonal Level Dispute Settlement Committee and Board Level Dispute Settlement Committee and finally the Complainant withdrawn the Civil Write Petition before the Hon'ble High Court of HP with the prayer that the Complainant wants to approach the appropriate Forum and filed the review application before the Ld. CGRF as such the demand notice raised by the Complainant is not time-barred and the Complainant is liable to pay the peak load hour restriction violation charges. The amount of Rs. 20,98,670/- charged by the replying Respondents is legally justified and in accordance with law. The outstanding amount and late payment surcharge on the outstanding amount are two sides of the same coin and cannot be considered amount are two sides of the same coin and cannot be considered in isolation of each other and the surcharge for the late payment has rightly been levied by the



Accepted
13/10/2020



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Respondent Board as such the representation filed by the Complainant is not maintainable and same is liable to be dismissed.

D – Additional submissions by the Complainant through rejoinder:

1. The Complainant submitted that the representation/ appeal has to be decided is on the basis of the pleadings, averments and document which have been filed before the Forum for CGRF and not new additional facts have been averred in the appeal/ representation or additional documents filed. He further submitted that if in appeal/ representation new facts have to be averred or documents have been filed either by the Appellant or by the Respondents, then the same can be done by way of filling an application to bring on record additional documents/ facts. The Respondents in their reply to the appeal/ representation have made the averments/ submissions which were not made in the reply to the Complaint before the Forum for CGRF, Kasumpti and thus now are debarred from raising all the said points. Unless and until the Respondents filed fresh application to bring on record the averments/ documents as per the law stating the reasons and an opportunity is given to the Appellants to rebut the same. The Complaint was filed by the Appellant in terms of the order of the Hon'ble High Court of H.P. and it cannot be said to be a continuation of the Complaint No. 1515405024 of 2005. The said Complaint which was filed by the Appellant in term of the order of the Hon'ble Court was a fresh Complaint had to be numbered afresh. To this effect also the order of the Ld. Forum below is bad in law, ought to be quashed and set aside. The Ld. Forum in terms of the order of the Hon'ble High Court 20/06/2018 and 08/01/2019 should have treated Complaint as fresh Complaint and decided the same afresh on all the issues and not on the point of surcharge only.
2. The Complainant submitted that the averment which have been made therein are denied being totally wrong, false, baseless and incorrect. Averments made in corresponding paras of the appeal/ representation be read as a part and parcel of the rejoinder in order to avoid repetition and for the sake of brevity and consciousness. Rest of the averments are denied. He further submitted that peak load violation charges have wrongly been levied. The submissions made by the Appellants regarding wrong levy of peak load violation charges in the Complaint filed in terms of the order of the Hon'ble high Court along with the documents have not been taken into consideration and no findings to the said effect has been given by the Ld. Forum below. The Ld. Forum had to decide the issue afresh in terms of the orders of the Hon'ble high Court and without taking into consideration the orders passed by the Zonal Level Settlement Committee, Board level Settlement Committee and Secretary (Power) to the Govt. of H.P. the Appellant further submits that they had approached the Zonal Level Settlement Committee, Board Level Settlement Committee and Secretary (Power) to the Govt. of H.P. and the Respondents had not approached them. Zonal Level Settlement Committee,



Lentp
13/10/2020



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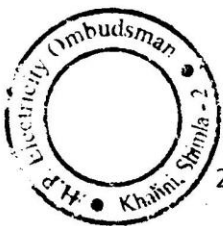
Board Level Settlement Committee and Secretary (Power) to the Govt. of H.P could not have in the petition filed before them by the Appellant asked the Appellant to pay surcharge and levy of surcharge said is bad in law. Judgment rendered in CMPMO No.1/2001 to 3/2001 did not deal with the orders passed by the Zonal Level Settlement Committee, Board Level Settlement Committee and Secretary (Power) to the Govt. of H.P. but dealt with the jurisdiction and maintainability of the suit filed before the Civil Judge. He further submitted that the Ld. Forum has averred that surcharge of 20,98,670/- is just on the basis of provisions of schedule of general and service charges. The Ld. Forum has failed to appreciate that the schedule only come into force in Nov., 2001. Thus there can be no retrospective effect of the schedule. The law laid down in 1990 Vol.8 SCC 16 has not been appreciated (Judgment attached). Further also the surcharge levied as have been more than the peak load violation charges which is highly unjust and defies logic. The Appellant further submitted that the surcharge demand is time barred as per the provisions of Section 56 of the Electricity Act and for the same the Respondents cannot threaten disconnection of energy and have to follow the law enshrined in 2020 SCC Vol.4 650 (Judgment attached). The Appellant further submits that Respondents have failed to produce on record any record on basis of which peak load violation charges have been levied. The record was with the Respondents and thus failure to produce the same. Adverse inference under Section 114 (g) of the Evidence Act ought to be drawn. The order of the Ld. Forum is vague and cryptic. The order of the Ld. Forum has not addressed all the points raised in the Complaint. It is also further submitted that additional facts have been averred in the reply and the same cannot be incorporated at Appellant stage unless and until separate application is moved specifying the reason and chance is given to the Appellant to rebut the same. Thus the order of the Ld. Forum below is bad in law ought to be quashed and set aside and the appeal/representation be allowed.

E – Written submissions by the Complainant:

1. The Complainant has not filed any written arguments.

F – Written submissions by the Respondents

1. The Respondents Submits that from February, 1998 to October, 1998 the Complainant was not having any sanction/ permission to run its industry during peak load hours and Complainant violated peak load hours restriction in the aforesaid months. Therefore the Respondents had raised the bill to the Complainant, charging for peak load hour's violation.
2. They further submits that the Complainant filed suit against peak load hours restriction charges before the Ld Senior Civil Judge, Nahan. The Ld Senior Civil Judge, Nahan



Leupth
13/10/2020



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directed to the both the parties to appear before the Zonal Level Dispute Settlement Committee.

3. The Respondents submits that the matter was decided by the Zonal Level Dispute Settlement Committee vide order dated 31/03/1999. The order passed by the Zonal Level Dispute Settlement Committee was upheld by BLDC & the Secretary MPP & Power. The Complainant had also approached the Hon'ble Civil Judge senior Division and had filed a Civil Suit against the HPSEBL. The Complainant also approached the Hon'ble High Court of HP but no relief had been given to the Complainant and as per various directions issued by the Courts, the amount Rs.12,33,522/- only was deposited by the Complainant up to 2004 without any late payment surcharge. Later on as per the decision of ZLDC HPSEB, in the year 2005, the HPSEBL issued a demand notice to Complainant on account of 2% surcharge amounting to Rs. 20.98 lacs w.e.f. 10/1998 to 4/2003 vide letter dated 15/10/2005. After receipt of the notice, the Complainant approached the Hon'ble High Court by way of CWP and the Hon'ble High Court of HP had stayed the recovery of the late payment surcharge as is raised by the HPSEBL. The Complainant had deposited only Rs. 6 lacs in two installments during Feb & March 2006.
4. They submits that the matter was decided by the Zonal Level Dispute Settlement Committee vide order dated 31/03/1999. The order passed by the Zonal Level Dispute Settlement Committee was upheld by BLDC & the Secretary MPP before the Hon'ble by way of filing Civil Writ petition and the same was withdrawn with the prayer that the Complainant wants to approach the appropriate Forum and filed Complaint before the Ld. CGRF praying that the demand notice raised is time-barred and the Complainant is not liable to pay the peak load hour restriction violation charges. The Zonal Level Dispute Settlement Committee decided the matter in accordance with the law, thereafter the BLDC & the Secretary MPP upheld the decision of the ZLDSC and the Complainant had not challenged these orders before the Hon'ble Court. Now after withdrawn his writ petition on the grounds that he wants to approach the appropriate forum to redress his grievances, he cannot say that the Zonal Level Dispute Settlement Committee has no power to pass order, when the Complainant has not contested this point before the Hon'ble High Court. Therefore the Complainant is stopped from its acts, deeds and conduct and acquiescence to raise any question on the jurisdiction of the Zonal Level Dispute Settlement Committee and its order dated 31/03/1999 at this belated stage. The Complainant had not raised this objection before the Zonal Level Settlement Committee and Board Level Dispute Settlement Committee or even before the Secretary to MPP to the Govt. of HP when the claim of the Complainant was being tried and adjudicated by the respective authorities, further the dispute was sent to the committee with the consent of the Complainant. It is also a settled law that the objection as to the jurisdiction has to be taken at the earliest stage before the same forum and same is not allowed to be raised in the appeal. The



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13/10/2020



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orders passed by the Zonal Level Settlement Committee, Board Level Dispute Settlement Committee, the Principal Secretary to the Govt. of HP and by CGRF are based on the record and the Complainant has not made out any new case which will warrants the interference of this Ld Appellant Authority.

5. The Respondents submits that they had issued monthly bills to the Complainant and shown the energy consumption in the monthly bills and it is evident from these energy bills that the Complainant used its units during peak load hours and used excess of sanctioned load of the Complainant. So far as the levying of late payment surcharge is concerned this is on the un-paid amount dues of the Complainant, as the Complainant failed to deposit the peak load violation charges when it became due and made part payment on the due amount, the Respondents were having no other option except to charge 2% late payment surcharge on un-paid dues and the Respondents have no authority to waive off the late payment surcharge. The provisions of the Section 61 (a) & Section 76 of the Electricity Act does not attracted in the present case. The provisions of instruction No. 131, 168 and 180 of Sales Manual as cited by the Complainant are also not attracted in the present case.
6. The Respondents submits that they raised the demand of Rs. 12, 33,522.25/- on account of peak load hour restriction violation and after 'that when the Complainant failed to deposit this amount, the replying Respondents issued demand notice to the Complainant to the tune of Rs. 20.98/- Lakh on account of late payment surcharge on the outstanding amount. The period of limitation will not be applicable in the present case since the matter was pending before the various courts and therefore the Complainant is trying to take undue benefits of its own acts. As per the pleading of the Complainant, it is clear that when the first time the Respondent raised demand to the Complainant, he approached the Ld. Civil Court Nahan and the matter was pending before the Civil Judge, thereafter the Complainant approached the Hon'ble High Court of HP two times and the matter was also adjudicated before the Zonal Level Dispute Settlement Committee.
7. They submits that there is nothing illegal in the communication dated 15/10/2005 issued by the Respondents as the Complainant was very much aware that the industry of the Complainant was running during peak hours and the Complainant had committed violation of peak load hours restriction and therefore the penalty in the form of peak load violation contract and demand charges were imposed upon the Complainant for running its industry during peak hours without having any permission to run his industry during peak hours. When the Complainant failed to deposit the peak load hours restriction violation charges the Respondents have left with no other option except to issue demand notice of Rs. 20.98/- Lakh by levying the statutory 2% surcharge which was to be deposited within 15 days from the date of notice as per rules and regulations. The



Leupto
13/10/2020



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Complainant was getting supply from 33 kV dedicated feeder from 132 kV Sub-Station Kala Amb and all metering equipment etc. were installed in the premises of the sub-station. The Respondents were recording hourly and half-hourly reading on the meters installed there and the recording the same in the log sheet maintained for this purpose. The energy meter installed in the premises of the Complainant was the multiple of 100 units. However, in case the consumption of the Complainant exceeds 300 units during peak load hours, peak load hour's violations charges shall be levied accordingly. It is specifically denied that the demand of Rs. 20.98 lakh raised by the Respondent on account of 2% late payment surcharge is without any basis or legal sanctity. They submitted that the peak load hour violation charges amounting to Rs. 12,33,522.25/- has not been paid by the Complainant at once or when it became due and had deposited the same in installments and therefore as per the provision of tariff rules the Complainant had been charged @ 2% late payment surcharge on the amount which was unpaid and outstanding. It is pertinent to mention here that the Complainant deposited the peak load violation charges in different years as is evident from the table drawn by the Complainant in its representation and therefore the late payment surcharge which was unpaid again it has been charged @ 2% late payment surcharge on unpaid late payment surcharge.

8. The Respondents submits that the Ld. Forum has rightly passed the order dated-22/01/2020 in review application as no new ground or no error on the face of record was found by the Ld. Forum below, and, a well-reasoned speaking order had been passed on the basis of the record placed before the Ld. Forum. The Complainant had been charged for actual consumption during peak hours and surcharges applicable thereon. The Complainant is liable to make the payment of the late payment surcharge as the Complainant had not made the payment of the demand notice when its becomes due rather its payment had been made in installment and the Complainant is liable to make the payment of the late payment surcharge on the amount which remain outstanding and the amount of Rs. 20, 98,670/- charged by the replying Respondents is legally justified and is in accordance with the regulations of the Sales Manual & others Regulations. The Review application has also been filed by the Complainant on the same ground thereby disputing the demand notice raised by the replying Respondents for a sum of Rs. 20.98 Lacs and no new ground has been made out in the review application nor any error apparent on the order passed by the Ld. CGRF and the Ld. CGRF rightly dismissed the Complaint of the Complainant.

9. They submitted that the Complainant has nowhere challenged the competency of the Jurisdiction of the Principal Secretary Power in any proceeding before filing the Complaint No. 1515/40/5024 of 2005, whereas objections as to jurisdiction has to be raised at the earlier possible and the at the very beginning of the proceeding in question.



Heupto
13/10/2020



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In the instant case also the Complaint after having been failed to get favorable order had raised the question of jurisdiction which is not sustainable and the order passed by the Forum below is liable to be upheld. However, the order passed by the Ld. Forum below is based on record which warrants no interference of this Hon'ble Court and the order passed by the Ld. CGRF is required to be upheld.

10. The Respondents further prayed that the application filed by the appellant may kindly be dismissed, in the interest of justice.

G - CGRF Order-

1. We have heard the Ld. Counsel of both the parties and also gone through the case file carefully and it has transpired that the original peak load Violation charges have been deposited amounting to Rs. 12,33,522.65 in twenty five instalment over the period of about four year. The Ld. Counsel for the Complainant argued that since the charge have been paid by them, therefore, further surcharge on delayed payment amounting to Rs. 20,98,670/- is unjust. On the other hand the Ld. Counsel for the Board state that the peak load violation charges were not deposited in lump sum; but over a period of four years and that is why the surcharge is leviable on the outstanding dues. After having considered the arguments advanced by the Ld. Counsels for the parties and the provision of Schedule of General and Service charges, the Forum feels that the above surcharge amount has been rightly charged by the Respondent Board against the Complainant. The Complaint is therefore, dismissed.

H – Analysis of the Complaint:

1. The case file at Consumer Grievances Redressal Forum have also been requisitioned and gone through.
2. The Complainant has a sanctioned Connected Load of 4500 kW with 3500 kVA Contract Demand as in May 2020. As stated by the Complainant, the Connected Load in 1998 was 713 kW with 713 kVA Contract Demand. As per A&A form dated 06/06/1995, the Complainant was having 1428 kW as Connected Load and 1500 kVA as Contract Demand and categorized as Large Scale (Industrial Use). The Complainant is getting supply from 132 kV sub-station at Kala Amb through 33 kV independent feeder.



3. The Complainant had a light load of 283.1 kW and could have consumed only 284 units per hour for its lighting and residential purpose during peak load restrictions which was later increased to 300 units by Chief Engineer (Commercial) vide letter dated 24/10/1997 with instructions not to run their factory during peak hours without sanction from competent authority failing which the PLVC shall be levied.

Leup to
13/10/2020



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4. The Complainant is said to have violated the Peak Load Restriction by using the energy in excess of what was sanctioned to them during February, March, April, May, September & October 1998. On surprise inspection by Respondent No. 3 & 4 on 17/03/1998, the Complainant factory was found to be running during peak hours which was authenticated in presence of representative of the firm Sh. A. K. Yadav, In-charge Electrical Section after ascertaining the same by switching the DG Set also. This fact was also admitted by firm vide communication dated 20/03/1998 that their light load was running on DG and the factory was running on Respondent Board's supply. The Peak Load Violation was confirmed.
5. The supply to the factory was disconnected on 17/03/1998, date of inspection by Respondent No. 3 & 4 and was reconnected on payment of Rs 1500/- as reconnection charges.
6. The Respondent Board raised Peak Load Violation Charges (PLVC) for February and March 1998 amounting to Rs 3,94,930/-. Similarly, the Respondent Board calculated PLVC for April 1998 as Rs 2,07,681/- for using 1900 units per hour against 300 units during peak hours 5:30 PM to 8:30 PM. Again the Respondent Board calculated Rs 2,06,244.55 for May 1998 for using 1600 units per hour against 300 units per hour during peak hours. The Respondent Board calculated Rs 2,13,020.35 for September 1998 for using 800 units per hour against 300 units per hour during peak load hours. The Respondent Board calculated Rs 2,11,649.95 for October 1998 for using 2000 units per hour against 300 units per hour during peak load hours. The total charges for peak load violations were calculated at Rs 12,33,552.25.
7. The Complainant filed a suit at Civil Judge (Senior Division) Nahan in 1998 and an interim orders were issued to adjudicate its claim before the Zonal Level Settlement Committee (ZLSC) after both parties agreed for same.
8. The matter was taken up in ZLSC meeting which took place on 31/03/1999. The firm was also represented and the Respondent Board was represented by the then Secretary HPSEB and AEE Kala Amb. The Respondents also produced the log sheets for the peak load consumption recorded at the 132/33 kV sub-station at Kala Amb in support of their claim at ZLSC. The verbal arguments of the petitioner were also recorded in the ZLSC meeting. The ZLSC on 28/01/2000, upheld the Peak Load Violation Charges (PLVC) levied by the Respondent Board which were Rs 12,33,552.25 at that time for the above stated period.



Leupth
13/10/2020 Page 19 of 32



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

9. The ZLSC held that in line with Clause 18 (c) of the Abridged Conditions of Supply, the PLVC are applicable on the firm for running the factory during peak load hours between 5:30 PM and 8:30 PM. The Clause 18 (c) of the Abridged Conditions of Supply states:

"Peak load Restrictions – Discontinuance & Penalty

(1) In case the breach of conditions of supply or of any restrictions thereunder is by way of infringement of peak load hours restrictions, such consumer shall be liable to pay the Peak Load Violation charges as prescribed under relevant schedule of tariffs. This shall however, not give any right to the consumer to subsequently run the industry during peak load hours. Further, in case the consumer violates the peak time restrictions five times, the power supply to his installation would be disconnected without prejudice to the right of the Board to take any other action, or to recover the additional dues as mentioned above.

*(2) **Penalty for Overdrawal:** If a consumer found to be drawing power exceeding the contract demand, he shall be liable to pay penalty charges as prescribed in the relevant schedule of tariff.*

In case the breach of conditions of supply or of any restrictions thereunder is by way of infringement of peak load hour restrictions, the supply to such a consumer shall be immediately disconnected and shall not be reconnected until the consumer has satisfied the Board in writing that such an act will not be repeated by him.

In such cases the monthly demand charges plus energy charges as well as the Monthly Minimum Charges shall be increased by the same ratio as the No. of peak load hours in the month bears to the total hours in the month. This shall, however, not give any right to the consumer to subsequently run the industry during the peak load hours. In case he is found to be doing so, supply to his premises shall be disconnected for a minimum period of 15 days without prejudice to the right of the Board to take any other action, or to recover the additional dues in the manner specified above.

10. The ZLSC calculated that the PLVC should be @ 12.5% of the energy bills (Monthly Demand Charges plus energy charges) for the months in question. One of the Issues taken up during meeting was levy of surcharge on unpaid amount of the bills @ 2% as clarified by the Chief Engineer (Commercial) vide letter dated 27/10/1997. *(This letter is not in record of the case).* The ZLSC found that 2% surcharge is to be levied on the unpaid amount of the bills to be compounded till full payment is made. This issue was not contested by the representative of the firm during the ZLSC meeting.



11. The matter was referred to Board Level Settlement Committee (BLSC) by the Complainant on 23/04/2001, which heard the pleas of the Complainant also through its

*Levy to
13/10/2020*



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SHARMA SADAN, BEHIND KEONTHAL COMPLEX, SHIMLA-171002
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counsel and in absence of any document to substantiate their claim that no Peak Load Violations have been committed by them, also upheld the decision of the ZLSC in a meeting held on 12/09/2002.

12. The case was agitated by the Respondent Board at HP High Court vide CMPMO No. 1 & 2 of 2002 which was disposed off by the Hon'ble High Court on 14/03/2003 and gave 4 weeks to deposit the entire disputed amount and also directed for the Board not to disconnect the supply but if the firm fails to make such deposits, the Board shall be at liberty to take coercive steps for the recovery of the amount in dispute and also to disconnect the supply. The Hon'ble High Court also observed that "it does not now at this stage lie in the mouth of the respondent to turn around and take a stand that either the constitution of the Zonal Level Committee was improper or that the Zonal Level Committee didn't have jurisdiction to adjudicate and settle the disputes between the parties. This is more so when admittedly the respondent being aggrieved of the adverse decision of the Committee has challenged the same in an appeal filed before the appellate forum."
13. The Complainant again referred the matter to Secretary (Power) at Govt of HP in Case No. 33/2002 on 25/10/2002 which was finally disposed off on 27/08/2005. The Secretary (Power) to Govt of HP also upheld the decisions of the BLSC dated 12/09/2002.
14. The Complainant paid the PLVC amounting to Rs 12,33,422/- in installments on the directions of the Hon'ble HP High Court as per Table in their submissions at para B (f) above w.e. from June 2001 till November 2004.
15. After the audit party raised the surcharge issue, the Respondents No. 4 then raised a demand on dated 15/10/2005 for 2% surcharge on the unpaid amount for Rs 20,98,670/- . The surcharge was also recommended to be recovered by the ZLSC in its decision dated 31/03/1999. Since the amount of surcharge was not paid, the Respondents included the same in the energy bill of the Complainant for December 2005 under Sundry Charge. The surcharge amount was disputed by the Complainant before the Respondent No. 4 through notice dated 20/12/2005 stating that the surcharge was never payable by them and further showing their intention to move the court for initiating the proceeding of the contempt of the court.
16. The Complainant then filed an application at Forum for Redressal of Grievances of Consumers, Shimla vide Complaint No. 1515405024 of 2005 which was not admitted and disposed off (*Orders were reserved on 23/12/2005 and announced later in January 2006*) dismissing the contention of the Complainant that the Secretary (Power) had no jurisdiction and after finding no cause of action.



Levy to
13/10/2020



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17. The Complainant then filed a CWP 94 of 2006 before HP High Court which on 20/06/2018 was dismissed as withdrawn. Further vide CMP No. 157 of 2019, Hon'ble High Court on dated 08/01/2019, on an application for extension in time, granted extension in time by four weeks to approach the statutory authority in terms of order dated 20/06/2018 in CWP No. 94 of 2006.
18. The Complainant then approached the Consumer Grievances Redressal Forum in RA No. 1515/1/19/003 in OA No. 1515405024 of 2005, dated 11/02/2019 with the prayer a) to set aside the bills raised for PLVC and demand of Rs 12,33,522.25; b) quash the orders dated 27/08/2005 of Secretary (Power), demand dated 15/10/2005 and bill dated 09/01/2006 for RS 20.98 lakh and, c) declare the imposition of surcharge as illegal and unconstitutional.
19. The Consumer Grievances Redressal Forum passed an order dated 22/01/2020 and held that as per Schedule of General & Service Charges, the surcharge amount has been rightly charged by the Respondent Board and accordingly dismissed the Complaint. The CGRF didn't touch the other issues like PLVC and order dated 27/08/2005 of Secretary (Power), Govt of HP. The Consumer Grievances Redressal Forum may have deliberately not touched this issue assuming that the same has already been decided at ZLSC, upheld by BLSC and Secretary (Power) to Govt of HP and attained finality. Moreover, the Hon'ble High Court had also directed the Complainant to deposit the default amount.
20. The Complainant has filed this application against the orders passed by CGRF on 22/01/2020. The Complainant has prayed in this application a) to quash and set aside the order 22/01/2020 passed in Complaint No.(RA 1515/A/19/003 in O.A. No. 1515405024 of 2005 titled as M/s Pasupati Spinning and Weaving Mills Vs. Executive Director, HPSEB Limited & others by the Ld. Forum for Redressal of Grievances of HPSEB Consumer, Kasumpti Shimla; b) to Quash and set aside the letter/ notice dated 15/10/2005 issued by the Assistant Executive Engineer, Electrical Sub-Division, HPSEB Limited Kala Amb, District Sirmour H.P.; c) call for the record of the case; d) any or further orders which this Hon'ble Commission may deem fit and proper in the facts and circumstances of the case may kindly be passed in favour of the Appellant and against the Respondents/ Distribution Licensee.
21. The Complainant has not specifically prayed for setting aside the PLVC demanded by the Respondents. His contention is mainly focused on the surcharge issue levied by Respondent No. 4 through demand dated 15/10/2005 after finding by audit and decision of the ZLSC.



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13/10/2020



HIMACHAL PRADESH ELECTRICITY OMBUDSMAN
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22. The PLVC issue was raised at various platforms since 1998 by the Complainant starting from representation at Civil Judge (Senior Division) Nahan District Sirmour, Zonal Level Settlement Committee, Board Level Settlement Committee, at Govt level with the Secretary (Power), the then Forum for Redressal of Grievances of Consumers in 2005, then Hon'ble HP High Court in 2006 which was decided in 2018 with extension in time in January 2019, present CGRF and now at Electricity Ombudsman level in appeal against Forum's orders.
23. The issue of surcharge was agitated before the Hon'ble HP High Court in CWP No. 94 of 2006 which was dismissed as withdrawn on 20/06/2018 extended by four weeks on 08/01/2019. And then raised this issue before present CGRF which passed an order on 22/01/2020.
24. Each issue is now discussed in detail starting from the Peak Load Violation Charges. There is no record present related to the imposition of PLVC submitted either by the Complainant or by the Respondents. The issue has also not been prayed for relief by the Complainant. The issue has since attained finality but needs to be clarified since mentioned in the submissions of the Complainant as wrong. The discussions are based on the record of the ZLSC, BLSC and Secretary (Power) to Govt of HP.
25. The PLVC charges has been rightly charged by the Respondent Board as confirmed by the ZLSC and upheld by the BLSC and thereafter by the Secretary (Power) to Govt of HP. The Complainant was allowed to use only up to 300 units during Peak Load Hours between 5:30 PM to 8:30 PM for its lighting and residential load. Firstly he was found on 17/03/1998 for the month of February and March 1998 violating the same by Respondent No. 3 & 4 and the Complainant also agreed for the same through letter dated 20/03/1998 stating that due to some mistake by Junior Technician, the light load was running on DG set and factory on HPSEB Supply. The fact was also confirmed by the log sheets presented before the ZLSC which were never disputed by the Complainant during meetings of ZLSC. The supply was disconnected on first detection on 17/03/1998 and reconnected after paying the charges of Rs 1500/- for reconnection.
26. The Complainant was similarly found to have violated the peak load hours by running the factory during April, May, September and October 1998. The fact was again confirmed through log sheets of 132/33 kV sub-station Kala Amb presented before the ZLSC and these were also not disputed by the Complainant at that time before ZLSC.
27. It is very much clear that the Complainant was violating the peak load hours repeatedly by running his factory and consuming more than 300 units exempted for him during peak load hours. The Complainant could not substantiate his claim before ZLSC that he was



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23/10/2020



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not using the factory during peak load hours. The decision of the ZLSC was upheld by the BLSC and Secretary (Power). Even the then Forum for Redressal of Grievances of Consumers, Shimla also found that the Secretary (Power) had the jurisdiction. The decision of the Forum in Complaint No. 1515405024 of 2005 have also not been challenged by the Complainant at any level and thus has attained finality. The ZLSC has rightly concluded that the PLVC are applicable as per Clause 18 (C) of the Abridged Conditions of Supply, applicable at that particular time.

28. The fact is also that the Complainant itself has represented before ZLSC on the directions of the Civil Judge (Senior Division) Nahan upheld by the HP High Court in CMPMO No. 2 of 2001 on 14/03/2003. And then again he took the matter before BLSC and ultimately at Secretary (Power) to Govt of HP.
29. Now the surcharge issue, the ZLSC in its decision on 31/03/1999 upheld that the surcharge is leviable on the outstanding amount and took this as one of the issues before it. This issue was not agitated before ZLSC by the Complainant then. This issues was raised again after the audit found the irregularity and the Respondent No 4 issued a demand based on the decision of the ZLSC on 15/10/2005.
30. The Complainant raised this issue before Hon'ble HP High Court vide CWP No. 94 of 2016 which dismissed the case as withdrawn on 20/06/2018 further extended by four weeks on 08/01/2019.
31. The Complainant then raised this issue before the Consumer Grievances Redressal Forum alongwith issue of wrong bills raised towards PLVC orders on which was issued on 22/01/2020. The Forum didn't touched the issue of wrong PLVC but decided that the surcharge is rightfully charged by the Respondents as per provisions of Schedule of General and Service Charges.
32. As per Clause e) ii) of Part-1-General of Schedule of Tariff No. 1/97, dated 08/02/1997 circulated by the Chief Engineer (Commercial), applicable w.e. from 10/02/1997 and Schedule of Tariff No. 11/98, dated 28/08/1998 circulated by the Chief Engineer (Commercial) and applicable w.e. from 01/09/1998, a 2% surcharge was applicable for "SP", "MS", "LS-1", "LS-2", "WIP", "AP", "BS", "SL" and "TM" category of Consumers on the unpaid amount of the bill for a month or part thereof (Excluding Electricity Duty) starting from the date of issue of bill until the amount is paid in full. The same provisions continued even in the subsequent tariff orders till 2001 which was superseded by the Commission's Tariff Order dated 02/07/2004 applicable w.e from 05/07/2004.



Leupto
13/10/2020 Page 24 of 32



HIMACHAL PRADESH ELECTRICITY OMBUDSMAN
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33. These Schedules of tariff were applicable at that particular times for LS category of Consumers and the Complainant is also fully covered by the same Schedules. Since the Complainant paid the PLVC amounting to Rs 12,33,422/- since June 2001 till November 2004 in various installments of Rs 25,000/- and Rs 50,000/-, the surcharge on the unpaid amount was applicable. The same was also pointed out by the Audit in 2005 and accordingly rightly demanded by the Respondent No. 4. Even after 2001, the surcharge was part of the Schedule of General and Service Charges. **However, the Commission in its tariff order dated 02/07/2004 applicable w.e. from 05/07/2004, reduced the surcharge on outstanding amount from 2% to 1% stating that the 2% surcharge is relatively higher given the interest rate scenario in the country (Clause 8.25.3 of tariff order) vide Clause 'D' of Part-I, General of Tariff Schedule and superseded the Tariff orders dated 29/10/2001. Similarly the Commission in its Tariff order dated 29/06/2005, applicable w.e. from 01/07/2005, kept the surcharge on outstanding amount at 1% level superseding the tariff order dated 05/07/2004 vide Clause 'L' of Part-I, General of Tariff Schedule. The amount of surcharge was restored at 2% in the Tariff Orders dated 24/04/2012 applicable w.e. from 01/04/2012 and have remained at this level till date.**
34. This surcharge amount of Rs 20,98,670/- is pending since 2005 and have been agitated by the Complainant at various level starting from HP High Court which gave liberty to file the case at statutory authority in its orders dated 20/06/2018 and 08/01/2019 and then at present CGRF.
35. Now the Complainant has also contended that the ZLSC was not constituted properly. This issue was never raised by the Complainant at BLSC and Secretary (Power). The Complainant has no right now at this belated stage to raise the issue of ZLSC which gave its decisions on 31/03/1999. The issue has also been addressed by the Hon'ble HP High Court in its order dated 14/03/2003 in CMPMO No. 2 of 2001. The matter was referred to ZLSC by the Civil Judge (Senior Division) Nahan for conciliation after both parties agreed for same.
36. The Complainant has also raised issue of the calculations for the surcharge on unpaid amount. His contention is that the Respondents have not calculated the surcharge on reducing unpaid amount. The Respondents have confirmed during final arguments on 26/09/2020 that they have calculated the amount on reducing balance and have also attached a calculation sheet for same in their reply dated 04/09/2020 which appears to be in order. However, the same can be looked in to again by the Respondents.



Leipt
13/10/2020 Page 25 of 32



HIMACHAL PRADESH ELECTRICITY OMBUDSMAN
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37. The Complainant have also raised issues regarding Instructions No. 131, 168 and 180 of the Sales Manual by the Forum in its order dated 22/01/2020. The Instruction No. 131 of Sales Manual, revised up to 31/01/1995, applicable in this case states:

"Levy of Late payment surcharge :

Following procedure should be adopted for levying surcharge in case the payment by any Industrial, Agricultural, Bulk Supply, Street Lighting. Water & Irrigation Pumping of Grid Supply consumer is not made with in the due date:-

(i) The surcharge will be levied on unpaid dues of the Board viz. Supply charges, monthly minimum charges, M.C.G., line maintenance and lamp renewal charges etc. at the rate applicable from time to time as per Schedule of Tariffs on the defaulting consumers, disconnected temporarily or not disconnected, in the event of the monthly bill not having been paid in full within the period specified in the bill. Surcharge shall however, not be levied on the meter/service rentals and electricity duty.

(ii) In the case of domestic and Non-Residential consumers, surcharge shall be levied at the rate in force from time to time on units billed during the month, in case payment is not made in full within the period specified in the bill.

Note: The surcharge shall be levied only in case of consumers disconnected temporarily. The levy of surcharge should be stopped with effect from the date of issue of permanent disconnection."

38. The surcharge levied by the Respondents are in no way contrary to the provisions under Instructions No. 131 of the Sales Manual. Now the Instructions No. 168 of the Sales Manual states:

Dispute Settlement Committees:

The following dispute settlement committees have been constituted to settle the disputes arising out of consumer Complaints regarding wrong billing. Only such disputed bills are to be referred to these committees whose amount is not accepted by the consumer.

A Circle Level Committee

The Committee consists of the following members:-

1. Superintending Engineer (Op) of the concerned Circle.
2. Executive Engineer (OP) of the concerned Division.
3. Executive Engineer (Flying Squad) or Xen (CBC) as the case may be.
4. Accounts Office (Commercial).

This Committee is empowered to decide the cases of the disputed bills upto Rs. 30,000/-.



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 13/10/2020



B. Zonal Level Committee

Zonal Level Committee consists of the following Members:-

1. Chief Engineer (OP) concerned.
2. Director (System Operation).
3. Chief Auditor.

This committee is empowered to decide cases having disputed bills upto Rs. 10 lacs.

C. Board level Committee

This Committee consists of the following Members:-

1. Member (Operation).
2. Member (F & A)
3. Chief Engineer (Commercial).

This committee is empowered to decide the cases of disputed bills of more than Rs. 10 lacs.

39. The Instructions No. 168 pertains to Constitution of the Dispute Settlement Committees. The matter has already been discussed/ observed in Hon'ble HP High Court Orders dated 14/03/2003 and require no further discussions. It is also a settled law that the objection as to the jurisdiction has to be taken at the earliest possible opportunity and same is not allowed to be raised in the appeal. The issue raised by the Complainant at this stage has already been addressed in paras stated above also.

40. The Instructions No. 180 of the Sales Manual states:

Payment of Arrears not originally billed:

1. There may be certain cases where a consumer is billed for some of the dues relating to previous months/years, which were not included in the bills for the relevant period either due to the negligence of the Board employees or due to some defect in metering equipment or due to application of wrong tariffs etc. Similarly, there may be cases where the Board is unable to do the monthly billing due to certain reason and the bills are sent for 2 or 3 months consumption or more and the consumer is unable to pay the bill in lumpsum. In all such cases the following officers are competent to allow the amount to be paid in monthly installments (to the extent mentioned here under) without the levy of surcharge :



Levy to
13/10/2020



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

1. SDO (A.E./A.E.E.) upto 3 installments.
2. Executive Engineer upto 6 installments.
3. Superintending Engineer Upto 12 installments.

The total surcharge, where applicable should be divided in equal installments and in case, the consumer does not make the payment of that installment by the due, then surcharge levied for that installment only.

2. The benefit of payment in installments is to be allowed on the express request of the consumer if the amount of arrears is heavy as compared to the normal monthly bill. The No. of installments should be decided on the merit of the case.

3. Monthly installment of the old arrears will be in addition to the current monthly energy charges. In order to take action against the official/officers due to whose fault the arrears accumulated, the cases shall be forwarded and decided by the authority next higher to the one which decides the payment by installments

II. Some of the sick units are seeking restoration of power reconnection and requesting the Board to allow them to make payments of their outstanding arrears in installments. Member (Operation), HPSEB is empowered to accord approval for payment of outstanding arrears in installments in such cases. The maximum number of installments as admissible in such cases are five which are further subject to the fulfillment of the following conditions.

1. that the reconnection to such unit will be effected only after the firm deposits Advance Consumption Deposit at the prevailing rates.
2. that such unit will have to deposit the first installment of arrears before the connection is restored by the competent authority, whereas the balance installments will be paid with the subsequent energy bills.
3. that in case of default in making payment by such unit, disconnection of supply will be effected as per instructions, in force in the Board.

In view of above, cases in respect of sick industrial units seeking restoration of power connections and allowing them payments of arrears in installments should be referred to the office of Chief Engineer (Commercial) for obtaining necessary approval.

Power to Waive off Surcharge.

The following officers are competent to waive off the recovery of the amount of surcharge levied in respect of payment of energy bills provided the same is not due to the fault on the part of the consumer :-

- SDO (A.E./A.E.E.) Upto Rs. 10/- in each case.
Executive Engineer Upto Rs. 50/- in each case.



Leupt
13/10/2020
Page 28 of 32



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

*Superintending Engineer Upto Rs. 200/- in each case.
Chief Engineer. Upto Rs. 500/- in each case.*

Note:- "In such cases where the consumer is not likely to have a re-connection and offers to clear the original principal amount or the same with a part of the amount on account of surcharge, the Executive Engineers are empowered to temporarily freeze the amount of surcharge which the consumer does not pay and realize the principal amount alongwith the surcharge which can be recovered from the consumer. Simultaneously the Executive Engineer concerned shall move the case for waiver-off the balance surcharge to the next competent authority and under such circumstances also, the authorities as indicated above are further authorized to waive—off surcharge upto the monetary limits indicated therein. For higher amount the case shall be referred to the Board. The Executive Engineer Concerned shall however be expected to settle the case as per his best judgement without the loss of the original principal amount and he should certify that the consumer is not likely to get the permanently disconnected connection reconnected, before waiving off the surcharge himself or forwarding the case to the competent authority to waive off the surcharge himself or forwarding the case to the competent authority to waive off the surcharge. Cases where the consumer does not even offer to pay the original principal amount shall however, be dealt with under other relevant provisions. "

41. The Complainant had not applied for the outstanding PLVC to be paid in installments, as per record available with case, and had paid the outstanding PLVC in installments after the Hon'ble HP High Court ordered. The provisions are specific that surcharge is to be levied in pending installments only meaning the reducing balance only. Since the PLVC was paid by the Complainant w.e. from June 2001 to November 2004 in various installments, the Respondents have calculated the surcharge due on the reducing balance as also attached as **Annexure-'D'** of their reply. The provisions of Instructions No. 180 have not been flouted by the Forum or by the Respondents.
42. The Complainant have also raised the issue of reliance of Consumer Grievances Redressal Forum on the Schedule of General and Service Charges which were not applicable at that stage since the Schedule of General and Service Charges came in to existence after 2001. The contention of the Complainant is not correct since these Charges were applicable for 1997 & 1998 also as per Part-I -General specifically Clause e) ii) of Schedule of Tariff No. 1/97, dated 08/02/1997 circulated by the Chief Engineer (Commercial), applicable w.e. from 10/02/1997 and Schedule of Tariff No. 11/98, dated 28/08/1998 circulated by the Chief Engineer (Commercial) and applicable w.e. from 01/09/1998. A 2% surcharge was applicable for "SP", "MS", "LS-1", "LS-2", "WIP", "AP", "BS", "SL" and "TM" category of Consumers on the unpaid amount of the bill for a month or part thereof (Excluding Electricity Duty) starting from the date of issue of bill until the amount is paid in full. These Schedules were applicable for the period when the PLVC amount was charged by the Respondent Board in 1998 but since the matter remained in litigation till





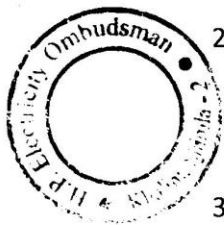
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decision by the Secretary (Power) to Govt of HP on dated 27/08/2005 and demand note was issued on dated 15/10/2005 based on decision of ZLSC on 31/03/1999 and audit observations.

43. The Complainant has also raised the issue of Section 56 of the Electricity Act, 2003. Section 56 is not attracted to the present case since immediately after the PLVC were demanded by the Respondents, the case is under litigation at various Forums w.e from 1998 and even when surcharge was demanded by Respondent No. 4 on 15/10/2005, the case remained in litigation at various level leading to the present application. Further, the Respondents are not debarred from raising any additional demand at any stage but they can't take any coercive action such as disconnection of electric supply of the Complainant. The limitation issue has already been addressed in various orders passed earlier such as in Case No. 13/2020 titled M/S Indkus Biotech India, Village Mauja Rampur Jattan, District Sirmour, HP-173001 Vs HPSEB Ltd & others passed on 17/08/2020 and in Case No. 14/2020 titled M/S Nasaka Energy Systems, Village Gullarwala, PO Baddi, Tehsil Baddi, Distt Solan HP-173205 Vs HPSEB Ltd & others passed on 09/09/2020. The limitation issue has also been addressed 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**.

I – Issues in Question:

1. Since the Complainant has not prayed for setting aside the PLVC levied by the Respondents, this matter is not taken up as issue. However, the same has already been clarified during the analysis above and in view of that the same has taken finality after decision by the ZLSC, upheld by the BLSC and the Secretary (Power) to Govt of HP and even supported by the decision of the Hon'ble HP High Court, the matter need not to be taken as separate issue at this stage. It is also a settled law that the objection as to the jurisdiction has to be taken at the earliest possible opportunity and same is not allowed to be raised in the appeal.
2. **Issue No.1:** Whether the Surcharge has been rightly charged by the Respondent No. 4 through demand dated 15/10/2005 on the outstanding amount paid by the Complainant in installments between June 2001 and November 2004?
3. **Issue No. 2:** Whether the orders passed by the Consumer Grievances Redressal Forum on dated 22/01/2020 in RA No. 1515/1/19/003 in OA No. 1515405024 of 2005 dated 11/02/2019 are correct?



Accepted
13/10/2020
Page 30 of 32



HIMACHAL PRADESH ELECTRICITY OMBUDSMAN
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J – Findings on the Issues:

Issue No. 1:

1. As is evident from the analysis done above, the peak load restrictions were violated by the Complainant and accordingly, the Respondents Board had levied the Peak Load Violation Charges in 1998 for the month of February, March, April, May, September and October 1998 which were paid by the Complainant w.e. from June 2001 till November 2004 in installments. Even his electricity connection was disconnected on same issue on surprise inspection by Respondent No. 3 & 4 on 17/03/1998 and also confirmed by his communication dated 20/03/1998 and reconnected again on payment of reconnection fees.
2. Since the outstanding amount was paid in installments of Rs 25,000/- and Rs 50,000/- in various installments and last in lumpsum amount of Rs 4,33,522/-, the surcharge levied by the Respondent Board on the reducing amount is correct and in line with the tariff provisions applicable at that times. The demand note was raised for surcharge amount on 15/10/2005. The surcharge rate of 2% was applicable till 05/07/2004 when the Commission reduced the surcharge on late/ outstanding payments to 1% on outstanding amount. The amount of surcharge was restored at 2% in the Tariff Orders dated 24/04/2012 applicable w.e. from 01/04/2012 and have remained at this level till date.

Issue No. 2:

1. As is evident from the analysis done above, the orders passed by the Consumer Grievances Redressal Forum on dated 22/01/2020 in RA No. 1515/1/19/003 in OA No. 1515405024 of 2005 dated 11/12/2019 are correct.

K – Order:

1. The orders passed by the Consumer Grievances Redressal Forum on dated 22/01/2020 in RA No. 1515/1/19/003 in OA No. 1515405024 of 2005 dated 11/12/2019 are upheld.
2. The demand note/ letter dated 15/10/2005, issued by Respondent No. 4 for Rs 20,98,670/- is upheld.
3. The Respondents are directed to recover the surcharge on reducing outstanding amount @ 2% for period up to 04/07/2004 and thereafter @1% for period up to 31/03/2012 and @ 2% for the period thereafter till actually paid.



Keupt
13/10/2020
Page 31 of 32



HIMACHAL PRADESH ELECTRICITY OMBUDSMAN
SHARMA SADAN, BEHIND KEONTHAL COMPLEX, SHIMLA-171002
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4. The Respondents are directed to double check the surcharge levied on reducing amount paid between June 2001 and November 2004 again and confirm the same to the Complainant within a period of 15 days.
5. The Respondents are directed to adjust the amount deposited with them during pendency of the Complaint.
6. The Respondents are also directed to adjust Rs 6,00,000/- paid by the Complainant on the directions of the Hon'ble HP High Court On 07/02/2006 and 07/03/2006.
7. The Respondents are directed to report Compliance within a period of 30 days positively.
8. No cost to litigation.

Issued under my hand and Seal of the office.



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13/10/2020
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