



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 Aditya Industries, Plot No. 21, Industrial Area Ratti, Sundernagar, District Mandi HP-175008
- Complainant

Vs

1. Executive Director (Personal), HPSEB Ltd, Vidyut Bhawan, Shimla-171004
2. The Assistant Executive Engineer (E), Electrical Sub-Division, HPSEBL, Nerchowk, District Mandi, HP-175008
- Respondents

Complaint No. 34/2020, Registered on 29/08/2020
(Decided on 24/11/2020)

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K L Gupta
HP Electricity Ombudsman

Counsel for:

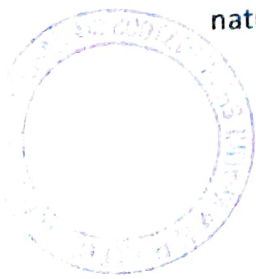
The Complainant: Ms Richa Sharma, Advocate
The Respondent: Mr Anil Kumar God, Advocate

Order

The case was registered on 29/08/2020. The case was first listed for 26/09/2020. The Respondents didn't file their reply by 26/09/2020 and sought time for same. The case was listed for 07/11/2020. The Respondents filed their reply on 05/11/2020. During the course of hearing on 07/11/2020, the Complainant chose not to file their rejoinder and orders were reserved. Hence the delay.

A – Brief facts of the Case:

1. M/S Aditya Industries, Plot No. 21, Industrial Area Ratti, Sundernagar, District Mandi, HP-175008 have filed an application (hereinafter call 'The Complainant') against the orders passed by the Consumer Grievances Redressal Forum on dated 14/07/2020 in Complaint No. 2233/4/19/052, dated 14/10/2019 with prayer to set aside the same being arbitrary, unreasonable, contrary to the facts of the case and non-speaking against the principle of natural justice.



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B – The Complainant's submissions:

1. The Complainant submits that against the illegal demand raised by the Respondent Board Complainant preferred Complaint No. 2233/4/19/052 for redressal of the grievance before the Hon'ble Forum, HPSEBL, Kasumpti, Shimla -9. That vide order dated 22/07/2020 (Copy of the order received by Complaint on 29/07/2020), complaint was dismissed without affording reasonable opportunity of being heard and replying on the judgment of the Apex Court, which the Complainant submits is not applicable in the instant case since in the impugned bill no time period has been specified by the Respondent Board.
2. The Complainant submits that the Complainant is a proprietary firm running its industry at 11-B Industrial Area Ratti, Sundernagar, District Mandi (HP). That the Complainant have taken an electricity connection from the Respondent Board. The Complainant have been issued bills from time to time and all the payments have been timely without any delay and all the payments due up have been cleared as and when demanded.
3. The Complainant further submits that in the month of August, 2019 the Complainant received one bill for outstanding energy bill amounting to Rs. 2,57,643/- which includes arrears. He Further submits that no period has been specified by the Board and no grounds has been stated in the notice that how this arrear has been created by the Board. The Complainant immediately brought to the notice of the Officials of the Board all these issues that the amount which has been reflected in the bill that neither period has been specified by the Board and no grounds has been stated in the notice that how this demand has been created by the Board.
4. The Complainant submits that no copy of reply was supplied to the Complainant and the Ld lower court without appreciating that no copy of reply has been supplied to the Complainant and he was not given any opportunity to file response to the reply decided the matter in very hasty manner. The Ld Court below relying on the matter titled as Assistant Engineer DI Ajmer Vidyut Vitran Nigam Limited and Anr. V/s Rahamatullah Alias Rahamjulla in SLP (CVR) No. 5190 of 2019 decided on 18/02/2020 by Apex Court dismissed the Complaint. He further submits that the decision of the case is not applicable to the present lis on account of the fact in this matter the Hon'ble Apex Court was to decide the limitation period begins to run from the date when mistake is discovered for the first time where as in the present case the Board has failed to point out how this amount is liable to be paid by the Complainant and on what grounds.
5. The Complainant submits that the amount of overbilling is not payable by the Complainant and action of the Respondents demanding the said amount is liable to be set aside. The Complainant even otherwise cannot pay such a heavy amount at once and

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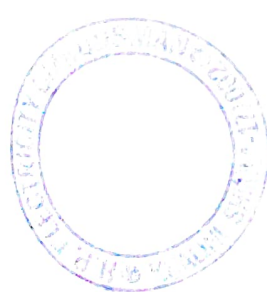
thus for no fault of the Complainant the Respondents cannot disconnect the electricity supply to the premises of the Complainant.

6. The Complainant submits that the order passed by LD Forum are arbitrary, unreasonable, contrary to the facts of the case, non-speaking against the principal of Natural Justice may kindly be set-aside and further demand raised by the Respondent Board is illegal, arbitrary may kindly be declared wrong, illegal and the demand may kindly be set-aside and Respondents may kindly be directed to refund the amount along with interest to the complaint, Any appropriate orders or directions may kindly be passed in favour of the Complainant and against the Respondents.

C – The Respondents’ submissions:

1. The Respondents submits that the application of the Applicant/ Complainant is not maintainable against them. They are acting on behalf of the HPSEBL, as per the Electricity Acts and Rules framed there under. The Appellant is also well aware about the said Acts and Rules.
2. The Respondents Submits that the Applicant has no locus standee to file any such application against the Respondents. The Appellant has entered into an agreement with the HPSEBL at the time of sanctioning/ release of the electric connection to him, wherein he has agreed to comply with the conditions incorporated therein and has agreed to pay the dues/ charges as per tariff/ rules and Regulations applicable.
3. The Respondents further submitted that the Applicant is also estopped by his act and conduct from filing the present application. The order passed by the Ld. CGRF dated 14/07/2020 is a well-reasoned order which calls for no interference of this Hon’ble Forum since the said order passed by the Ld. CGRF is based on rules and regulation as well as keeping in view the law laid down by the **Hon’ble Apex Court in C.A No. 1672 of 2020 arising out of SLP(Civil) No. 5190 of 2019**, but the Applicant instead of depositing the whole amount, filed the instant application before this Hon’ble Forum just to linger on the payment of dues, hence this application filed by the Applicant deserves only dismissal, since the order passed by Ld. CGRF is lawful and genuine as per the relevant Rules and Regulations.
4. The Respondents submits that the representation of the Applicant/ Complainant is not maintainable and same is liable to be dismissed, because the Ld. Forum has passed a well-reasoned order in the complaint after gone through the relevant record submitted before Ld. Forum below by the Applicant as well as by the Respondent (HPSEBL) and also keeping in view the recent law laid down by the **Hon’ble Apex Court in C.A. No. 1672 of 2020 arising out of SLP(Civil) No.5190 of 2019**.

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5. The Respondents admits that the Complainant is a proprietary firm and the replying Respondent issued electricity bills to the Complainant time to time. The Respondents further submits that the Complainant is a habitual defaulter for payment of electricity bills which fact is already brought on record in the pleadings submitted by the Respondent before Ld. CGRF.
6. The Respondents submitted that in month of July, 2019 the replying Respondent issued energy bill of Rs 67,918/- (including LPS Rs. 1,248) and the same was not paid by the Complainant, thereafter in the month of August, 2019 energy bill of Rs 2,34,502/- (including LPS of Rs.5,654)/- was issued which also includes the arrears of last month of energy bill along with surcharge and Sundry Charges of Rs. 94,000/- as detected by the Audit Party, since less IDC has been charged from the Complainant at the time of release of electricity connection, however after re-verifying the facts/ record about Rs. 94,000/- that amount has also been credited in the monthly bill of October, 2020 on its own by the replying Respondent even when there is no such order passed by the Id. CGRF to refund the same.
7. The Respondents submits that sufficient opportunities were given to the Complainant by the Ld. Forum below to defend his case, but nobody was present not even on a single date of hearing, which act of the Complainant is self-explanatory to show its demeanor. The Respondents specifically denied that the copy of reply filed by the Respondent before the Ld. Forum was sent to the Complainant through post by them. The Ld. Forum passed order when no one was coming forward on behalf of the Complainant to present his case therefore, the order of the Ld. Forum is well reasoned order and the same has been passed on the basis of the record placed before the Ld. Forum. The Respondents therefore prayed that no further interference is required in the order dated 14/07/2020 passed by Ld. Forum and the present representation filed by the Applicant is required to be dismissed as accordingly prayed in para infra.
8. The Respondents submits that the Applicant/ Complainant was not paying his energy bills timely and is habitual defaulter to pay his energy bills and some time he makes part payment even after due date. It is submitted that there is no over bills done by the replying Respondent to the Complainant as of now since the amount of Rs. 94,000/- has also been credited in the monthly bill of October, 2020 after verifying the facts/ record on its own by the replying Respondent even when there is no such order passed by the Id. CGRF to refund the same. Hence the rest of the demand raised by the replying Respondent is legal, justified and as per rules & regulations and the Complainant is liable to pay the same to the replying Respondent.

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9. The Respondents prayed that the application filed by the Applicant/ Complainant is just to linger on the payment of the arrears due against the Applicant firm which may kindly be dismissed, in the interest of justice.

D – The Complainant’s additional submissions through rejoinder:

1. The Complainant has chosen not to file rejoinder as intimated during last hearing on 07/11/2020.

E – CGRF Order:

1. We have heard the parties and carefully examined the case file, record and provisions of Regulations and latest law on the matter. It is not denied that the bill was issued by the Respondents to the Complainant against energy consumption charges in August, 2019, which included arrears of previous month bill, sundry charges and surcharges etc. The augments of the Respondent have force that sundry charges of Rs. 94,000/- as per audit party observations made in January, 2018, are also based on Himachal Pradesh Electricity Regulatory Commission Regulation, 2012 and in consonance with new rate of IDC notified by the authority on 30/04/2013, which provided for two part tariff to be paid by the consumer i.e. Complainant Company. This fact is not controverted by the Complainant and we find no illegality in the Arrears and Sundry Charges raised in bill (AnnexureC-1) which are found to be in tune with observations of RAD and the HPERC Regulations, 2012 on the matter.
2. We have also perused the latest law on the matter as laid by the Hon’ble Supreme Court in a case Titled **Assistant Engineer, DI Ajmer Vidyut Vitran Nigam Limited And Anr. V/s Rahamatullah Alias Rahamjulla in SLP (CVR) No. 5190 of 2019.** decided on 18.02.2020. The Hon’ble Apex Court has held that limitation period begins to run from the date when mistake is discovered for the first time. The court also held that Section 56(2) of the Electricity Act, 2003 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 case of a mistake or bonafide error.
3. In the instance case, the bonafide error was detected by RAO in January, 2018 and the supplementary demand/bill was raised accordingly by Respondent Company in August, 2019 i.e. within limitation of 2 years as prescribed in the law. As such we find the Annexure C-I within time limit and it’s not time barred as contended by the Complainant.
4. In view of the observations made herein above, we find the present complaint devoid of any substance and merits and deserves to be dismissed. Accordingly the instant complaint is dismissed. The parties are left to bear their own costs.



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F – Analysis of the Complaint:

1. The case file at Consumer Grievances Redressal Forum has also been requisitioned and gone through.
2. The Complainant is running a factory at Ratti, Sundernagar and have electricity connection at 11 kV from the Respondent Board from 33/11 kV sub-station Ratti, Ner Chowk, District Mandi HP. They were issued Power Availability Certificate for a load of 135 kW with 135 kVA Contract Demand on 15/11/2015. They had deposited Rs 1,35,000/- towards Infrastructural Development Charges (Rs 4,000/- submitted later as confirmed by Er. T. S. Chauhan, AE Nerchowk on last hearing on 07/11/2020, however no record is present) on dated 11/12/2015 (Might be 11/11/2015 and mentioned inadvertently as 11/12/2015 in Power Availability Certificate dated 15/11/2015). The Infrastructural Development Charges were to be recovered in line with applicable provisions under Himachal Pradesh Electricity Regulatory Commission (Recovery of Expenditure for Supply of Electricity) Regulations, 2012 as mentioned in Sr. No. 6 and 13 of PAC dated 15/11/2015.
3. The Respondents have submitted additional documents such as Power Availability Certificate, Load sanction letter and copy of sundry register posting etc as directed vide interim order dated 26/09/2020.
4. The Complainant was sanctioned a Connected Load of 163.887 kW with 135 kVA as Contract Demand on 30/09/2016 by Sr Executive Engineer, Electrical Division, Sundernagar.
5. The Audit Party detected a short recovery of Infrastructural Development Charges amounting to Rs 94,000/- which was posted as Sundry in the energy bills of the Complainant issued on 05/08/2019 for the period 01/07/2019 to 01/08/2019. No reasons were assigned to the Sundry posted and as per Complainant's version, they were not informed at any stage about the nature of recovery.
6. The Audit contended that as per Himachal Pradesh Electricity Regulatory Commission (Recovery of Expenditure for Supply of Electricity) Regulations, 2012, the Infrastructural Development Charges have been short recovered by Rs 94,000/- and accordingly the AE Nerchowk posted a Sundry for same as intimated by Sr. Executive engineer, Sundernagar at the forum vide reply dated 18/12/2019. The Complainant's contention is that copy of reply was not supplied to him and accordingly he could not file his rejoinder and the Forum decided the case in absence.

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7. Now vide reply dated 05/11/2020, the Respondents have admitted that they have reviewed the amount of Infrastructural Development Charges recovery and after re-verifying the facts/ record have on their own credited an amount of Rs 94,000/- as Sundry Credit for the energy bill issued on 09/10/2020.
8. From the scrutiny of the energy bill for October 2020 it is evident that the Respondents have given Sundry credit for Rs 1,18,820/- (The detailed calculation for working out the refund for Rs 1,18,820/- instead of Rs 94,000/- have not been provided). Further scrutiny of the charges to be levied for 135 kVA of Contract Demand, it is clear that only Rs 1,39,000/- (As per **Table-1** below) were the Infrastructural Development Charges to be paid by the Complainant and the audit party have wrongly calculated the short recovery of Rs 94,000/-. The Complainant had paid Rs 1,39,000/- and no additional amount was required to be paid on account of Infrastructural Development Charges.

Table-1

Sr. No.	Contract Demand Chargeable in kVA	Rate (In Rs)	Amount (In Rs)
1.	First 30	300/-	9000/-
2.	Next 20	500/-	10,000/-
3.	Next 50	1,000/-	50,000/-
4.	Balance 35	2,000/-	70,000/-
5.	G total		1,39,000/-

9. The Complainant had requested for refund of the amount charged extra alongwith interest. The Complainant had wrongly charged a Sundry for Rs 94,000/- in energy bill issued on 05/08/2019 without assigning the reasons and clarifying the short recovery pointed out by the Audit leading to litigation at Consumer Grievances Redressal Forum and then at HP Electricity Ombudsman. The conduct of the Respondents have unnecessarily dragged the Complainant in litigation for more than one year based on the audit report without verifying the facts and satisfying the audit memo at their end at first instance and instead have posted the Sundry for Rs 94,000/- without intimating the reasons for same.
10. The act of the Respondents have costed the Complainant with additional financial burden of Rs 94,000/- which they had already paid. The Complainant is entitled for compensation and relief of interest on the excess amount so charged as demanded.
11. Further, due to the recovery reflected in energy bill for August 2019, and nonpayment of subsequent energy bills by the Complainant, the Respondents have resorted to extreme measure of disconnecting the supply to the Complainant and causing unnecessary

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harassment and disruption of his business activities. The supply was restored on the orders of HP Electricity Ombudsman vide interim Order dated 01/09/2020.

12. Although the amount has been refunded now to the Complainant in energy bill for October 2020 by the Respondents on their own efforts for re-verifying the facts/ record which is a welcome step by the present incumbent i.e. AE Nerchowk. However, the Complainant have been put to a loss which require to be compensated in the form of interest on excess amount charged from the Complainant and kept by the Respondents in line with Clause 5.7.3 of Himachal Pradesh Electricity Supply Code, 2009.
13. Further, I strongly feel that the interest amount, due to lack of knowledge of the provisions of the regulations and applicable rates for Infrastructural Development Charges based on wrong interpretation by the Audit without satisfying at initial stage of Audit Memo and before putting in energy bills as Sundry Debit in August 2019 by the concerned official, is required to be recovered from the erring officers/ officials.
14. Further, since the Complainant has been drawn in to unnecessary litigation on the basis of wrong audit memo/ report, and also put to harassment of litigation and disconnection of his supply without any fault of his, I feel that the cost of litigation has to be refunded to the Complainant.

G – Issues in question:

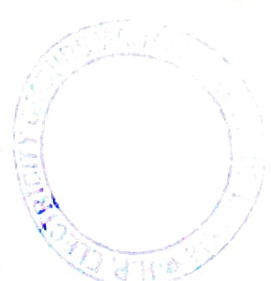
1. **Issue No. 1:** Whether the Sundry charged for Rs 94,000/- by the Respondents from the Complainant in energy bill issued on 05/08/2019 based on audit for short recovery of Infrastructural Development Charges was correct?
2. **Issue No.2:** Whether the orders passed by the Consumer Grievances Redressal Forum on dated 14/17/2020 in Complaint No. 2233/4/19/052, dated 14/10/2019 are correct as per prevailing rules and regulations?
3. **Issue No. 3:** Whether the Complainant is entitled for compensation towards interest on excess amount wrongly charged?

H – Finding on the Issues:

Issue No. 1

1. As is evident from the analysis done above, the Sundry charge for Rs 94,000/- posted in energy bill issued on dated 05/08/2019 based on wrong observation of the audit was not in line with the rates applicable under Himachal Pradesh Electricity Regulatory Commission (Recovery of Expenditure for Supply of Electricity) Regulations, 2012 and the

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Respondents have posted the sundry without satisfying the audit at their end for wrong application of Infrastructural Development Charges.

Issue No.2:

1. As is evident from the analysis done above and from the scrutiny of the orders passed by the Forum, the orders passed by the Consumer Grievances Redressal Forum on dated 14/07/2020 in Complaint No. 2233/4/19/052, dated 14/10/2019 are not correct as per prevailing rules and regulations and have been issued without verifying the exact calculation and amount to be charged from the Complainant for the applicable Infrastructural Development Charges.
2. The Forum have not applied their mind and have only relied on the audit report observation/ Respondents' reply without verifying the Infrastructural Development Charges applicable as per Himachal Pradesh Electricity Regulatory Commission (Recovery of Expenditure for Supply of Electricity) Regulations, 2012.

Issue No. 3:

1. As is evident from the analysis done above, the Complainant has been dragged in to unnecessary litigation on account of wrong application of Infrastructural Development Charges on the observation of the Audit and have been charged in excess of applicable Infrastructural Development Charges. The Complainant is entitled to the interest on excess amount kept by the Respondents without any fault of his and dragging him in to unnecessary litigation.

I – Order:

1. The orders passed by the Consumer Grievances Redressal Forum on dated 14/07/2020 in Complaint No. 2233/4/19/052, dated 14/10/2019 are quashed and set aside.
2. Since the Respondents have on their own refunded the wrong Infrastructural Development Charges in the energy bill issued on 09/10/2020, they are directed to pay simple interest @ 15% on the amount excess charged from the Complainant from the date of deposit till finally paid on 09/10/2020.
3. The Respondents are directed to provide calculations to the Complainant in respect of Sundry Credit for Rs 1,18,820/- posted in energy bill issued on 09/10/2020.
4. The Respondents are directed to recover the interest so paid to the Complainant from the erring officer/ official.

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5. The Respondents are directed to pay litigation cost amounting to Rs 10,000/- to the Complainant through Sundry credit in future energy bills.
6. The Respondent No. 1 is again advised to sensitize the field units in continuation to direction in Case No. 9/2019 title M/S Manjholi Stone Crushers Vs HPSEB Ltd passed on 10/08/2020 in respect of Rules, applicable Tariff and Regulations by providing regular trainings.
7. The Respondents are further directed to report direction wise compliance within a period of 21 days from the date of issue of this order.
8. The Complaint filed by M/S Aditya Industries, Plot No. 21, Industrial Area Ratti, Sundernagar, District Mandi HP-175008 is hereby disposed off.

Given under my hand and seal of this office.



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Electricity Ombudsman