



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 Koyla Industries, 11-B, 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, Ner Chowk, District Mandi, HP-175008.

- Respondents

Complaint No. 26/2020 Registered on 17/08/2020

(Decided on 25/11/2020)

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Er. K.L.Gupta

HP Electricity Ombudsman

Counsel For:

The Complainant: Ms Richa Sharma, Advocate

The Respondents: Sh. Anil Kumar God, Advocate

Order

The case was registered on 17/08/2020. Since the proof regarding having deposited up to 50% level of the disputed amount was submitted on 26/08/2020, the case was listed for 26/09/2020. The Respondents were to submit their reply by 11/09/2020 and rejoinder was to be submitted by 19/09/2020. The reply was filed by the Respondents on 26/09/2020 and they were directed to submit additional submissions by 09/10/2020. The rejoinder was to be filed by 15/10/2020. The case was listed further for final arguments on 07/11/2020.

The Complainant informed of having credited the disputed amount through Sundry in energy bills for October 2020 and Counsel for Complainant informed of either withdrawing the case by consulting his client or submit its rejoinder by 21/11/2020. Orders were reserved. No rejoinder was filed by 21/11/2020. Hence the delay.



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A – Brief Facts of the Case:

1. M/S Koyla Industries, 11-B, Industrial Area Ratti, Sundernagar, District Mandi HP-175008 have filed a Complaint through Sh. Sunil Kumar (hereinafter called as 'The Complainant') against the orders of the Consumer Grievances Redressal Forum passed on 14/07/2020 in Complaint No. 2233/4/19/051, dated 14/10/2019. He has prayed to set aside the orders of the Forum and declare the demand raised by the Respondent Board as illegal, arbitrary and also set aside the same and refund the amount alongwith interest to the Complainant and any other orders/ directions in his favour.

B – The Complainant's submissions:

1. The Complainant submits that against the illegal demand raised by the Respondent Board Complainant preferred Complaint No. 2233/4/19/051 for redressal of the grievance before the Hon'ble Forum, HPSEBL, Kusumti, Shimla -9. He further submits 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 II-B Industrial Area, Ratti, Sunder Nagar, Distt. Mandi (HP). He further submits 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 submits that in the month of August, 2019 the Complainant received one bill for outstanding energy bill amounting to Rs. 4,12,567/- which includes arrears of Rs 1,86,651/-. He further submitted 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. He 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. He further submitted 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

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Rahamjulla in SLP (CVR) No. 5190 of 2019 decided on 18/02/2020 by Apex Court dismissed the Complaint. He submitted 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 thus for on fault of the Complainant the Respondents cannot disconnect the electricity supply to the premises of the Complainants.
6. The Complainant submitted 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. He further prayed that any appropriate orders or directions may kindly be passed in favour of the Complainant and against the Respondents.

C – The Respondents's submissions:

1. The Respondents submits that the application of the Applicant/ Complainant is not maintainable against the Respondents. The Respondents 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 standie 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 submits that the Applicant is also estopped by his act and conduct from filing the present application. It is relevant to mention here that 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,

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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 the 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.**
5. The Respondents further submits that the Ld. Forum below passed a well-reasoned order keeping in view the rules and regulation as well as recent law laid down by the Hon'ble Apex Court, hence it calls for no interference of this Hon'ble Forum.
6. The Respondents submits that in month of March, 2019 the replying Respondent issued energy bill of Rs 1,46,741/- and the same was not paid by the Complainant before due date, therefore the late payment surcharge of Rs 2,752/- was levied in the electricity bill of next month. In the month of April, 2019 energy bill of Rs 1,96,224/- was issued which included surcharge of Rs 2,751.93 paisa as arrears of previous month, in the month of May, 2019 energy bill of Rs 4,26,505/-, which included arrear of energy charges of previous month Rs 1,96,224/- and surcharge also, that was also not paid by the Complainant and same was included as arrears in energy of June, 2019 and the month of June, 2019 the Complainant cleared all his previous liability of outstanding dues. Thereafter, in month of July, 2019 the energy bill of Rs 2,01,498/- was issued to the Complainant without any outstanding amount and the Complainant not paid this amount, therefore the energy bill of Rs 4,12,567/- was issued to the Complainant in the month of August, 2019, including arrears of Rs 2,01,498/- of previous month. The Respondents submits that it is relevant to mention that as of now the arrears of the Applicant/ Complainant stands for Rs. 10,24,571/- (up to the month of September - 2020), since the Applicant is only paying the regular electricity consumption bill and not clearing its dues which are increasing day by day in the garb of the pending litigation and the instant lis is just to linger on the payment of dues.
7. The Respondents submits that the HPSEBL being a public utility issued the bills including surcharge to the Applicant as per the approved tariff rate by the HPERC.
8. The Respondents submits that the Applicant/ Complainant was not paying its energy bills timely and is a habitual defaulter to pay its energy bills timely and further submits that some time the Applicant paid its energy bill in part or after due date. The Respondents submitted that there is no over bills issued by the replying Respondent to the Applicant/

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25/11/2020



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Complainant. Hence the demand raised by the replying Respondent is legal, justified and as per rules & regulations applicable, therefore the Complainant is liable to pay the same to the replying Respondents. The demand raised by the replying Respondent including surcharge is absolutely right, justified & legal as per the regulations and tariff orders framed by the HPERC.

9. The Respondents further 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 -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 demand of Rs. 4,12,567/- includes Rs.3,01,497 as arrears of last month energy bill along with 2% surcharge, as the Complainant failed to pay previous bill on due date and remained defaulter as ascertained for record with reference to outstanding electricity dues, as per their reply, which is not controverted by the Complainant before us. Thus, we find no illegality & wrong in demand raised by replying Respondent as Annexure C-1.
2. We have 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 bill were raised since March, 2019 till August ,2019, which is 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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E – The Complainant's submissions through rejoinder:

1. Despite Interim Orders dated 07/11/2020 to file the rejoinder by 21/11/2020, the Complainant have not filed the same.

F – Analysis of the Complaint:

1. The case file at Consumer Grievances Redressal Forum has also been requisitioned and gone through.
2. The Complainant has having an electricity connection of 304.65 kW Connected Load and 250 kVA Contract Demand at 11 kV.
3. The Complainant received an energy bill issued on dated 05/08/2019 for period 26/06/2019 to 27/07/2019 which included an arrear of Rs 1,86,651.49 as arrear. The total arrear with ED of Rs 14,846/- was Rs 2,01,497.84.
4. As contended by the Complainant, he was neither informed the ground in the notice that how this arrear has been created not they specified any period of recovery. He further contended that at the forum, he was not supplied copy of the reply filed by the Respondents and was also not given opportunity to file response to reply and the matter was decided in hasty manner.
5. He further contended that the decision in the matter title Assistant Engineer DI Ajmer Vidyut Vitran Nigam Limited and Anr Vs Rahamatullah Alis Rahamjulla in SLP (CVR) No. 5190 of 2019 decided on 18/02/2020 does not apply to him as observed by the forum in its orders dated 14/07/2020.
6. On the other hand the Respondents contended that the Complainant didn't paid or paid partially his energy bills for March, April, May, June and July 2019 and the energy bill issued in August 2019 include the arrears of Rs 1,86,651/- of previous month.
7. From the scrutiny of the statement and copies of the energy bills issued since March 2019 till November 2020 submitted by the Respondents during last hearing, the Complainant had not paid or paid partially his energy bills which were accumulated to Rs 6,63,834/- in June 2019 and the Complainant paid the entire amount due including the surcharge.
8. Further scrutiny of the statement shows that the Respondents created a Sundry item in the month of October 2019 for Rs 71,818/-. During arguments in last hearing on 07/11/2020, the Respondents informed that the same has been posted which was due for some other account held by the family members of the Company.



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25/11/2020



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9. This aspect has not been contended by the Complainant in his application and instead he contended the arrear of Rs 1,86,651/- in the energy bills of August 2019 which was in fact due from the unpaid amount of previous month. There is no dispute of such amount as per statement submitted by the Respondents and the counsel for the Complainant didn't place any arguments for same.
10. Further, the Respondent No. 1, Er T.S. Chauhan submitted during last hearing on 07/11/2020 that they have now reversed the said Sundry posted in October 2019 through credit given in energy bill issued for October 2020 amounting to Rs 87,614/- (Rs 71,818/- + Rs 15,796/-). The additional amount has not been explained however.
11. Since the amount wrongly posted through Sundry in October 2019 for Rs 71,818/- have now been credited back through Sundry posted in October 2020 alongwith Rs 15,796/- (May be surcharge accumulated for same), there remains no dispute for same. Further, the Complainant have not taken up this issue in his submissions.
12. Further scrutiny of the statement shows that till October 2020, an amount of Rs 9,47,535/- was due from the Complainant which is regular energy bill amount with surcharge since the same has not been paid or partially paid by the Complainant for the previous months.
13. The counsel for the Complainant submitted that since they are not in position to pay the accumulated outstanding amount in one go, they may be allowed for the same to be paid in installments.
14. The provisions under Sales manual 2017 Instructions under Clause 39 (4) states that no installments of current energy bill. The part payment shall be allowed as per Instruction No. 35. The relevant instruction 35.1.6 (2) states that the part payment in respect of Consumer is allowed only once in a financial year with minimum gap of six months between the part payment. Further 35.1.6 (3) states that the part payment is to be made in two installments. The first being equivalent to the monthly average of 12 months preceding the current month and balance shall be paid with surcharge in next month. In case the Consumer does not pay the same in next month, the action for disconnection should be implemented as per standard practice.
15. From the scrutiny of the statement submitted by the Respondents on 07/11/2020 it can be clearly construed that the Respondents have either allowed more than one part payment contravening the provisions of the Sales Manual, 2017 or even have allowed to accumulate the arrears by either allowing part payments for more than once in the same financial year or by not taking action to disconnect the electricity supply to the Consumer by following the procedures specified in the Sales Manual, 2017 Clause 35.1.6 (2) & (3).

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25/11/2020





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16. The Complainant has off and on made either partial payment or even skipped the full amount due for so many occasions.
17. The orders passed by the Consumer Grievances Redressal Forum on 14/07/2020 in Complaint No. 2233/4/19/051, dated 14/10/2019 have although touched the issue of energy bill issued for August 2019 which was the arrears for previous month but have not taken up the issue of part payment or no payment made by the Complainant. The Forum had not issued any directions for recovery of the balance amount by the Respondents which affects the collection efficiency as well as the AT&C losses of the utility.
18. Further Clause 35.1.6 (6) states that the part payment shall be deemed to be without prejudice to HPSEBL's right to disconnect the supply to the Consumer for non-payment, unless HPSEBL specifically undertakes not to initiate action to disconnect the supply for non-payment of such outstanding amount for certain period. From the scrutiny of the record and statement submitted by the Respondents, it appears no such undertaking have been provided by the Respondents not to initiate action to disconnect the supply for non-payment of such outstanding amount for a certain period.

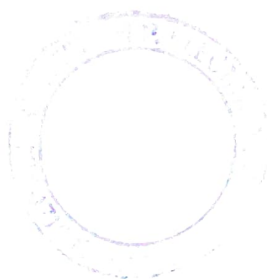
G – Issues in question: Since the erroneous Sundry posted in October 2019 have now been credited back to the Complainant in the energy bill for October 2020 with surcharge perhaps, the same is not being taken up as issue. Further, the Complainant have also not taken up this issue in his application/ submissions.

1. **Issue No. 1:** Whether the orders passed by the Consumer Grievances Redressal Forum on dated 14/07/2020 in Complaint No. 2233/4/19/051, dated 14/10/2019 is correct?
2. **Issue No. 2:** Whether the demand raised by the Respondents in energy bill for August 2019 which included and arrear for Rs 1,86,651/- was correct?

H – Findings on the issues:

Issue No. 1:

1. As is evident from the analysis done above, the orders passed by the Consumer Grievances Redressal Forum on dated 14/07/2020 in Complaint No. 2233/4/19/051, dated 14/10/2019 is correct since the amount of arrear in energy bill issued by the Respondents in August 2019 includes an arrear for the unpaid amount of previous month.



Accepted
25/11/2020



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Issue No.2:

1. As is evident from the analysis done above, the demand of arrears raised in energy bills for August 2019 by the Respondents was correct since the same was unpaid amount for the previous month.

I – Order:

1. The orders passed by the Consumer Grievances Redressal Forum on dated 14/07/2020 in Complaint No. 2233/4/19/051, dated 14/10/2019 are upheld.
2. The arrear raised by the Respondents in energy bill issued on 05/08/2019 amounting to Rs 1,86,651/- is upheld being arrears of unpaid amount for previous month.
3. The Respondents may take further action in line with provisions under Instruction No. 35 read with Instruction No. 39 of Sales Manual, 2017 for recovery of the outstanding amount.
4. The Complaint filed by M/S Koyla Industries, 11-B, Industrial Area Ratti, Sundernagar, District Mandi HP-175008 is hereby dismissed.
5. No cost to litigation.

Given under my hand and seal of this office.

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25/11/2020
Electricity Ombudsman