



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 Kundlas Loh Udyog, Village Balyana, PO Barotiwala, District Solan, HP-174103
- Complainant

Vs

- 1. Executive Director (Personal), HPSEB Ltd, Vidyut Bhawan, Shimla-171004**
 - 2. The Assistant Executive Engineer (E), Electrical Sub-Division, HPSEBL, Barotiwala, District Solan HP-174103**
 - 3. The Sr Executive Engineer, Electrical Division, HPSEB Ltd, Baddi, District Solan, HP-173205**
- Respondents**

Complaint No. 38/2020 (Registered on 29/09/2020)
(Decided on 05/03/2021)

CORAM

Er.K.L.Gupta
HP Electricity Ombudsman

Counsel for:

The Complainant: Sh. Rakesh Bansal

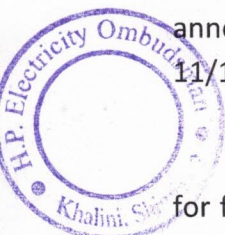
The Respondents: Sh. Anil Kumar God, Advocate, Sh. Kamlesh Saklani, Advocate

Order

The Complaint was registered on 24/09/2020 and the case was sent for reconciliation on 24/09/2020 to the Respondent Board and the Complainant under Regulation 34 of Himachal Pradesh Electricity Regulatory Commission (Consumer Grievances Redressal Forum and Ombudsman) Regulations, 2013 to be returnable by 15/10/2020. Since no communication was received from either of the parties by 15/10/2020, the case was listed for hearing on 28/11/2020 vide notice dated 16/10/2020. The Respondents were to file their reply by 07/11/2020 and the Complainant was to file his rejoinder by 13/11/2020.

The Respondents requested for extension in time to file their reply which was granted till 23/11/2020 vide Interim Order dated 09/11/2020 and the Complainant was to file his rejoinder by 28/11/2020. The Respondents failed to submit their reply even by 28/11/2020 and the case was further listed for 19/12/2020 later postponed to 21/12/2020 due to five days week announced by HP Govt. The Respondents were given additional time to file their reply by 11/12/2020 and the Complainant was to file his rejoinder by 18/12/2020.

Again, the Respondents failed to submit their reply and additional time was granted for filing their reply by 20/01/2021 and the Complainant was to file his rejoinder by 27/01/2021



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and the case was listed for 15/02/2021. Even on extended time, the Respondent Board failed to submit their reply but produced communication dated 10/02/2021 withdrawing the demand note issued on 31/07/2015 for Rs 1,52,12,681/- and communication dated 12/02/2021 wherein they informed the Complainant that they have given Sundry Credit for Rs 76,06,341/- issued in energy bill on 11/02/2021 deposited by the Complainant during his pendency at Consumer Grievance Redressal Forum and at Divisional Commissioner to the level of 50% of the disputed amount.

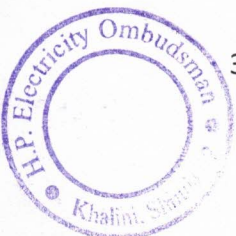
Since there was some ambiguity in the amount credited, the Respondents were directed to file their additional submissions by 26/02/2021 clarifying the amount exactly deposited by the Complainant and credited back. The Complainant was to file his rejoinder, if any by 05/03/2021. The Respondents provided additional submissions on 01/03/2021 through email and the Complainant filed his rejoinder on 02/03/2021. Hence the delay.

A – Brief facts of the case:

1. M/S Kundlas Loh Udyog, Village Balyana, PO Barotiwala, District Solan, HP-174103 have filed an application through Sh. Rajiv Singla (hereinafter referred to as 'The Complainant') under section 28 (1) (b) of Himachal Pradesh Electricity Regulatory Commission (Consumer Grievances Redressal Forum and Ombudsman) Regulations, 2013 against the orders passed on dated 20/08/2020 in Complaint No. 1453/2/19/020, dated 19/06/2019. The Complainant has prayed not to take coercive action like disconnection of electricity since 50% of the amount has already been deposited by him, to quash the demand note dated 27/06/2015 and to refund the 50% amount alongwith interest.

B – The Complainant's submissions:

1. The Complainant submits that he is a partnership firm and has a factory located under Barotiwala sub-division for manufacture of steel products. The power connection of the Complainant's factory has been provided by the Respondents on 66 kV line by direct tap from Parwanoo-Barotiwala 66 kV line. He further submitted that he has been running from pillar to post since 2015 and justice has been delayed beyond any reasonable time period that can be considered under the law.
2. The Complainant submits that first grievance was filed with the Respondent No. 2, in the shape of various letters, but no action was taken against the same and then the Grievance was filed before CGRF vide Complaint No. 1453/3/15/047, which was admitted on 01/08/2015 and disposed on 20/12/2016.
3. He further submitted that an appeal was filed before the Divisional Commissioner on 31/01/2017 and was decided on 14/03/2019. Complaint was filed again before CGRF on 19/06/2019, which was disposed on 20/08/2020. HE submitted that it is very clear from the above that the CGRF has exceeded the time limits of 45 days defined in the regulations both



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the time taking more than a year. CGRF should have in fact, rejected the case, at the admission of the grievance, but after taking replies, rejoinders and arguments on several occasions, the Complaints were disposed due to want of jurisdiction.

4. The Complainant submits that he has received a notice dated 27/06/2015 which was served to him demanding an amount of Rs. 1,52,12,681/- on account of under-assessment for the period August 2014 to May, 2015, which the Complainant challenged before the CGRF vide their earlier Complaint number 1453/3/15/047, which was disposed by the Forum as the Forum observed lack of jurisdiction in the matter. The Complainant filed appeal before the Divisional Commissioner, Shimla on the basis of observation of the CGRF, which too was dismissed by the Ld. Divisional Commissioner in Appeal No. 28 of 2017, with the observation that the appeal filed was not as per requirement of law. Based on the observation made by the Ld. Divisional Commissioner, the Complainant again approached the CGRF citing that the orders and observations made by CGRF earlier and the Ld. Divisional Commissioner were contradictory vide Complaint No. 1453/2/19/020, which too has been dismissed by the CGRF once again, relying on its findings in the earlier Complaint No. 1453/3/15/047. Aggrieved by the orders of the CGRF, this representation was being filed under Regulation 28 (1) (b) of the HPERC (CGRF & Ombudsman) Regulations, 2013 as the Applicant/Complainant is aggrieved by the orders dated 20/08/2020 passed by the Ld. Forum in the Complaint no. 1453/2/19/020 titled as Kundlas Loh Udyog v. HPSEBL and others, whereby the Consumer Grievance Redressal Forum of HPSEBL had observed that

*"We find it hard to departure from the findings recorded by this Forum in its order (**Annexure C-5**) dated 20.12.2016 and conclude that the present matter does not fall within the jurisdiction of this Forum, as facts presented before us by the parties are similar, to the facts raised in the earlier Complaint referred above. The Respondents also states that MRI data clearly has shown that meter was tempered. Thus, the matter falls Under Section 126 of Electricity Act, 2003 and this Forum has no jurisdiction to decide such issue as per laid down provisions of law on the matter. Accordingly, within going into the merits of the case, the present Complaint is dismissed for want of Jurisdiction with a liberty to the parties to approach appropriate authority/courts for redressal of their grievance.*

The parties are left to bear their own cost. The case is decided neither in favour of Complainant nor in favour of Respondents. The order served on 18.08.2020 is released on 20.08.2020 in open court."

5. The Complainant submits that the Complaint is being filed well within the time period of one month allowed for filing such representation and is thus not time barred. He is aggrieved by the decision of the Forum to dispose the matter once again stating that the matter being fell within the scope of section 126 of the Electricity Act, 2003.
6. The Complainant submits that he has already deposited a sum of Rs. 76,06,341/-, before approaching authorities in the earlier Complaints/ Appeals, which is equal to 50% of the



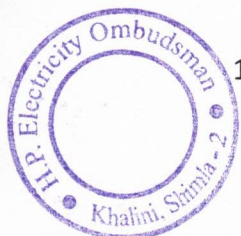
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disputed amount as is required to file the appeal before the Ld. Ombudsman. Also, the requisite of Court fee of Rs. 1,000/- has been deposited as per regulations, the proof of which is attached with this representation.

7. The Complainant submits that he is an EHT Consumer getting supply at a voltage of 66 kV having Connected Load of 7400 kW of load with 7502 kVA of Contract Demand. Earlier his load was 4000 kW with a Contract Demand of 4442 kVA from a common feeder. He is engaged into the manufacture of steel ingots and also rolled products such as angle irons and channels etc. since about past one decade.
8. The Complainant submits that the Respondent No. 3 served a supplementary bill vide his letter dated 27/06/2015, which was received by the Complainant on 30/06/2015 for a huge amount of Rs. 1,52,12,681/- for the period August 2014 to May, 2015, alleging that the meter had been tampered with so as to record less energy on the basis of MRI energy record and also alleged that the secondary of the 66 kV Current Transformer has been shorted number of times. The Respondent No. 3 further stated in the notice that the demand has been raised on account of under-assessment on account of tampering of meter. The Complainant wrote a letter dated 01/07/2015 to Respondent No. 2 in response to the supplementary bill raised by him protesting against the unjustified demand. He also requested for a copy of MRI record on the basis of which the demand has been raised and also requested Respondents to provide detailed calculations of underassessment. The Complainant also deposited a sum of Rs. 600 @ Rs. 50 per month as fee for providing MRI data for last one year. The Respondents then provided the MRI data to him. After studying the MRI data, the Complainant wrote another letter requesting the calculations, which were provided later by the Respondent No. 3. He wrote another letter objecting the basis of the calculation to which they never received any reply from the Respondents. The Respondents debited in the sundry charges of the energy bill for the month of June, 2015. The Complainant deposited the energy bill after deducting the amount of arrears and overcharging on other accounts in the bill. He wrote a letter giving details of deductions made from the energy bill. The Respondent No. 3 issued a notice dated 22/07/2015 for disconnection if the disputed amount was not deposited within 15 days from the due date.
9. The Complainant submits that he wrote another dated 23/07/2015 to Respondents No. 2 & 3, objecting to the notice as the same was in violation of the Paras 5.7 and 7.1.2 of the Supply Code, 2013. The Respondents during all this correspondence never replied to the contentions and issues raised by the Complainant and completely ignored them and never tried to resolve the dispute at their level.
10. The Complainant submits that the proceedings were not carried out in the manner prescribed in section 126 (dealing with unauthorized use of electricity) or section 135 (dealing with theft and dishonest abstraction of electricity), of the Electricity Act, 2003, which requires assessment to be carried out by an assessing officer authorized by the State



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Government, which in the present case would have been the Sr. Executive Engineer, Electrical Division, Baddi. Chapter-VI of the Supply Code, 2009 prescribes the detailed procedure to be adopted in such eventualities. Since the demand notice nowhere mentioned any of these sections and no assessment was carried out by the assessing officer as is required under the provisions of assessing the liability of a Consumer, the impugned demand notice cannot be considered to have been issued under these sections. Appeal under these sections lie with the Court of Divisional Commissioner and is out of the jurisdiction of the CGRF. As there was no final assessment orders in the matter, the Divisional Commissioner would not have entertained the appeal. The demand notice being a normal demand notice and not a result of assessment proceedings, the same fell under the jurisdiction of the CGRF. The Complainant filed a Complaint before this Forum vide Complaint number 1453/3/15/047 protesting the levy of arrears on account of under assessment charges illegally charged in the energy bills of the Complainant. During the interim directions issued by the Hon'ble Forum, the Complainant was directed to deposit a sum of Rs. 51.00 lakhs towards one-third of the disputed amount of Rs. 1,52,12,681/-, which was deposited by the Complainant as per following detail:

| Date | UTR No. | Amount |
|--------------|------------------------|--------------------|
| 03.09.2015 | PUNBR52015090310003708 | 25.00 lakhs |
| 04.09.2015 | PUNBR52015090410006104 | 10.00 lakhs |
| 04.09.2015 | BARBR52015090400818998 | 11.00 lakhs |
| 04.09.2015 | BARBR52015090400845378 | 5.00 lakhs |
| Total | Rs. | 51.00 lakhs |

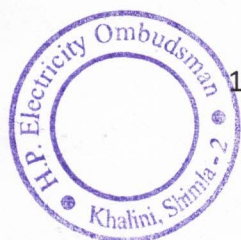
11. The Complainant submits that the Hon'ble Forum dismissed the Complaint filed before it on 20/12/2016 for want of jurisdiction vide its order stating as below:

"As per the reply and statements of the Respondents it is case of tempering of meter seals and shorting of C.T. secondaries. As such this case falls under Section 126 of the Electricity Act, 2003 and is beyond the jurisdiction of this Forum.

The Complainant is, as such, disposed of as dismissed for want of jurisdiction.

The case is decided neither in favour of the Complainant nor in favour of the Respondents. The Complainants are at liberty to approach appropriate Court/Commission for settlement of his grievances, if any."

12. The Complainant submits that on the basis of the observation that the matter of the Complaint had to be adjudicated under section 126 of the Electricity Act, 2003, he was left with no option than to file an appeal before the jurisdictional court of the Divisional Commissioner, Shimla and the appeal was admitted as Appeal Number 28/ 2017. While



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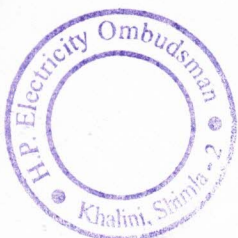
submitting the appeal the Complainant had to deposit a further sum of Rs. 25,06,341/- vide UTR No. PUNBR52017011813829709 dated 18/07/2017, thereby taking the total amount paid by the Complainant in this matter to **76,06,341/-**.

13. The Complainant submits that the appeal filed by him was dismissed by the Divisional Commissioner stating that the appeal filed was not as per requirement of law. The Hon'ble Divisional Commissioner observed that the procedure as per section 126 was lacking in the case and as such no provisional assessment order or final assessment order was issued by the Respondents and also that the Respondent number 3 was not the assessing officer as per provisions of the Act. The Divisional Commissioner in Para 5 of the order observed that

"Since the action was required to be taken under section 126 of the Act and hence, it was to be ensured to get the matter processed as per requirements of provisions of Section 126. As per provisions of the Section ibid, the provisional order of assessment was initially to be got issued from the office of Respondents. Thereafter, the objections of the appellant firm, if any, were to be considered and got decided and if not found based on facts, then the final order of assessment was required to be issued against the appellant firm. The appellant firm thus could have come in appeal against the final order of assessment under section 127 of the Act. The appellant firm has filed the present appeal against the Notice of recovery and not against the final order of assessment and hence, the same is not maintainable."

14. He further submits that while the CGRF observed that the impugned demand notice was not in their jurisdiction by referring to section 126 of Electricity Act, 2003, the Ld. Divisional Commissioner observed that the said notice was not as per section 126 either. Based on findings of the Ld. Divisional Commissioner, the Complainant again filed a Complaint before the vide Complaint no. 1453/2/19/020, which has again been disposed by the Forum in similar fashion as the earlier Complaint.

15. The Complainant submits that the Forum was well within its jurisdiction as the impugned demand notice was not issued under section 126 or section 135 of the Electricity Act. Regulation 19 allows the CGRF to reject any Complaint which fall under section 126, 127, 135 to 139, 152 and 161 of the Act. Since all these sections require the Respondents to take action as prescribed under the law with a well-defined procedure, the matters pertaining to these sections have to be dealt as per such procedure. There being no mention of these sections in the notice, nor the procedure being followed by the Respondents, the demand being based on suspicions, apprehensions and surmises, the CGRF was well within its power to adjudicate on the impugned notice. The Ld. Divisional Commissioner in his orders have brought out the procedure and have observed that a final assessment orders should have been issued by the Respondents. As it was out of the jurisdiction of the Ld. Divisional Commissioner, he could not have quashed the notice and thus dismissed the appeal as a consequence.



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16. The Complainant submits that the Ld. Ombudsman is well within his jurisdiction to decide on any representation filed, if a Consumer is not satisfied by the orders of the Forum as per Regulation 28 (1) (b) of the HPERC (CGRF and Ombudsman Regulations) 2013.

17. **Impugned demand notice does not fall u/s 126 of the Electricity Act:** The Complainant submits that the Forum's observation in the orders passed in Complaint number 1453/3/15/047 is totally incorrect. Section 126 of the Electricity Act, 2003 is reproduced below:

Section 126: (Assessment): --- (1) If on an inspection of any place or premises or after inspection of the equipments, gadgets, machines, devices found connected or used, or after inspection of records maintained by any person, the assessing officer comes to the conclusion that such person is indulging in unauthorized use of electricity, he shall provisionally assess to the best of his judgement the electricity charges payable by such person or by any other person benefited by such use.

(2) The order of provisional assessment shall be served upon the person in occupation or possession or in charge of the place or premises in such manner as may be prescribed.

(3) The person, on whom an order has been served under sub-section (2) shall be entitled to file objections, if any, against the provisional assessment before the assessing officer, who shall, after affording a reasonable opportunity of hearing to such person, pass a final order of assessment within thirty days from the date of service of such order of provisional assessment of the electricity charges payable by such person.

(4) Any person served with the order of provisional assessment, may, accept such assessment and deposit the assessed amount with the licensee within seven days of service of such provisional assessment order upon him:

(5) If the assessing officer reaches to the conclusion that unauthorised use of electricity has taken place, the assessment shall be made for the entire period during which such unauthorized use of electricity has taken place and if, however, the period during which such unauthorised use of electricity has taken place cannot be ascertained, such period shall be limited to a period of twelve months immediately preceding the date of inspection.

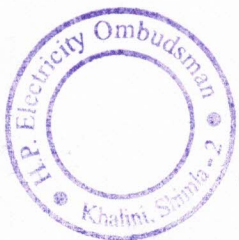
(6) The assessment under this section shall be made at a rate equal to twice the tariff rates applicable for the relevant category of services specified in sub-section (5).

Explanation.- For the purposes of this section,-

(a) "assessing officer" means an officer of a State Government or Board or licensee, as the case may be, designated as such by the State Government;

(b) "unauthorised use of electricity" means the usage of electricity –

(i) by any artificial means; or



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(ii) by a means not authorised by the concerned person or authority or licensee; or

(iii) through a tampered meter; or

2[(iv) for the purpose other than for which the usage of electricity was authorised; or

(v) for the premises or areas other than those for which the supply of electricity was authorized.”

18. The Complainant submits that from the perusal of the text of the section 126 and the impugned demand notice, it is evidently clear that no such allegation has been stated in the demand notice, even to an extent that the word “unauthorized” was not even used in the notice. This is further supported by the observations made by the Ld. Divisional Commissioner in the orders passed in Appeal No. 28 of 2017, who has categorically denied that the said demand notice cannot be understood as final orders of assessment under section 126 and hence the appeal stood baseless and was dismissed by him.

19. **Impugned notice does not fall under section 135 of the Electricity Act, 2003:** Section 135 of the Electricity Act, 2003, deals with theft of electricity and reads as under:

Section 135. (Theft of Electricity): --- (1) Whoever, dishonestly, --

(a) taps, makes or causes to be made any connection with overhead, underground or under water lines or cables, or service wires, or service facilities of a licensee or supplier as the case may be; or

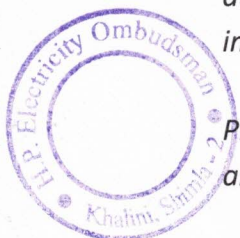
(b) tampers a meter, installs or uses a tampered meter, current reversing transformer, loop connection or any other device or method which interferes with accurate or proper registration, calibration or metering of electric current or otherwise results in a manner whereby electricity is stolen or wasted; or

(c) damages or destroys an electric meter, apparatus, equipment, or wire or causes or allows any of them to be so damaged or destroyed as to interfere with the proper or accurate metering of electricity,

(d) uses electricity through a tampered meter; or

(e) uses electricity for the purpose other than for which the usage of electricity was authorised, so as to abstract or consume or use electricity shall be punishable with imprisonment for a term which may extend to three years or with fine or with both:

Provided that in a case where the load abstracted, consumed, or used or attempted abstraction or attempted consumption or attempted use –



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(i) does not exceed 10 kilowatt, the fine imposed on first conviction shall not be less than three times the financial gain on account of such theft of electricity and in the event of second or subsequent conviction the fine imposed shall not be less than six times the financial gain on account of such theft of electricity;

(ii) exceeds 10 kilowatt, the fine imposed on first conviction shall not be less than three times the financial gain on account of such theft of electricity and in the event of second or subsequent conviction, the sentence shall be imprisonment for a term not less than six months, but which may extend to five years and with fine not less than six times the financial gain on account of such theft of electricity:

Provided further that in the event of second and subsequent conviction of a person where the load abstracted, consumed, or used or attempted abstraction or attempted consumption or attempted use exceeds 10 kilowatt, such person shall also be debarred from getting any supply of electricity for a period which shall not be less than three months but may extend to two years and shall also be debarred from getting supply of electricity for that period from any other source or generating station:

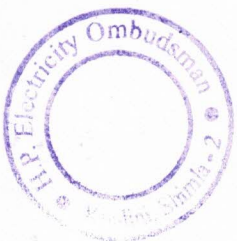
Provided also that if it is proved that any artificial means or means not authorized by the Board or licensee or supplier, as the case may be, exist for the abstraction, consumption or use of electricity by the consumer, it shall be presumed, until the contrary is proved, that any abstraction, consumption or use of electricity has been dishonestly caused by such consumer.

(1A) Without prejudice to the provisions of this Act, the licensee or supplier, as the case may be, may, upon detection of such theft of electricity, immediately disconnect the supply of electricity:

Provided that only such officer of the licensee or supplier, as authorized for the purpose by the Appropriate Commission or any other officer of the licensee or supplier, as the case may be, of the rank higher than the rank so authorised shall disconnect the supply line of electricity:

Provided further that such officer of the licensee or supplier, as the case may be, shall lodge a Complaint in writing relating to the commission of such offence in police station having jurisdiction within twenty four hours from the time of such disconnection:

Provided also that the licensee or supplier, as the case may be, on deposit or payment of the assessed amount or electricity charges in accordance with the provisions of this Act, shall, without prejudice to the obligation to lodge the Complaint as referred to in the second proviso to this clause, restore the supply line of electricity within forty-eight hours of such deposit or payment.]



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(2) Any officer of the licensee or supplier as the case may be, authorized in this behalf by the State Government may --

(a) enter, inspect, break open and search any place or premises in which he has reason to believe that electricity has been or is being, used unauthorisedly;

(b) search, seize and remove all such devices, instruments, wires and any other facilitator or article which has been, or is being, used for unauthorized use of electricity;

(c) examine or seize any books of account or documents which in his opinion shall be useful for or relevant to, any proceedings in respect of the offence under sub-section (1) and allow the person from whose custody such books of account or documents are seized to make copies thereof or take extracts therefrom in his presence.

(3) The occupant of the place of search or any person on his behalf shall remain present during the search and a list of all things seized in the course of such search shall be prepared and delivered to such occupant or person who shall sign the list:

Provided that no inspection, search and seizure of any domestic places or domestic premises shall be carried out between sunset and sunrise except in the presence of an adult male member occupying such premises.

(4) The provisions of the Code of Criminal Procedure, 1973, relating to search and seizure shall apply, as far as may be, to searches and seizure under this Act.

20. He further submits that the provisions of Supply Code, 2009 are also notified on similar lines in Chapter VI in Clause 6.2. the procedure essentially requires the lodging of FIR within 24 hours. Clause 6.2.1 (d) provides for sealing of equipment as evidence and also photography/ videography to prove such indulgence.

21. The Complainant further stated that the tamper data recorded by a meter is a set of events that it records based on criteria laid down in the software. It could be current unbalance / voltage unbalance and among many other such criteria. The demand notice mentions the word tampering but the same is not substantiated by evidence.

22. The Complainant submits that it is proven beyond doubt that the AEE, Barotiwala has not proceeded as per procedure laid down for suspicion of theft from the very beginning. Also, he is not the authorized officer under the provisions of the Act, to issue any assessment orders in cases deemed to be covered under section 135 of the Electricity Act, 2003. The demand notice not being an assessment order was merely a demand notice to recover



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energy losses in the line to which many Consumers are connected and the Complainant has been singled out to recover the entire losses.

- 23. Maintainability of the demand notice:** The Complainant submits that the demand notice dated 27/06/2015 issued by the AEE Barotiwala not being the final assessment orders as explained in para 3.2.1 and 3.2.2 above, is not maintainable under any rule notified in the Supply Code, 2003 or the Sales Manual. There is no claim on account of meter being defective, under which circumstances overhauling of bills is allowed. If the meter was defective, then such test report has to be produced, which has not been produced in past proceedings before the Forum. Neither any claim on account of clerical mistake has been mentioned anywhere in the stand taken by the Respondents. The notice issued by Respondents is without any basis and has been issued without any logic and is not supported by any rules or regulations and hence deserves to be quashed. When the meter was working fine, and was neither running slow or fast, the question of underassessment does not arise at all. He has never agreed a guaranteed consumption of 55000 kVAh per day, assuming which the underassessment notice has been served to the Complainant. Such averaging is only allowed in case of burnt/ dead meters.
- 24. Proceedings before the Forum vitiated and biased:** The Complainant submits that the CGRF has vitiated the process of delivering justice based on rules and have misguided, wrongly stated the facts in the orders passed in Complaint no. 1453/3/15/047, as there was no case u/s 126 in this matter. Section 126 is not even related to the matter, but was quoted wrongly in the orders, because of which the Complainant was left with no option than to approach the Divisional Commissioner in the form of appeal, who also maintained that this was not a case to be proceeded under section 126. Even after, reapproaching the Forum, he got no justice although the proceedings and arguments before the CGRF were very much in his favour. The CGRF has issued orders which are biased in order to protect the officers of the utility who have acted in contravention of the applicable rules and regulations.
- 25. Entitlement of refund along with interest:** The Complainant submits that as per clause 5.7.3 of the Supply Code, 2009, he is entitled for interest @ 15% simple interest and rates applicable from time to time under this para. The relevant provision is reproduced below:
- "If on examination of a Complaint, the licensee finds a bill to be erroneous, a revised bill will be issued to the consumer indicating a revised due date of payment, which will not be earlier than ten days from the date of delivery of the revised bill to the consumer. If the amount paid by the consumer under para 5.7.1 is in excess of the revised bill, such excess amount will be refunded through adjustment first against any outstanding amount due to the licensee and then against the amount becoming due to the licensee immediately thereafter. The licensee will pay to such consumer ³(simple interest on the excess amount @ 15 percent per annum, or where the rate is fixed by the Commission at the rate so fixed, on daily basis)³ from the date of payment till such time the excess amount is adjusted."*



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Prior to the amendment of rate of 15%, the rate of such refund was "twice the SBI's Short Term PLR prevalent on the first of April of the relevant year".

26. The Complainant submits that he had to approach this Hon'ble Forum, the interest applicable on refunds ordered by the Forum is also defined in the HPERC (CGRF and Ombudsman) Regulations, 2013. The relevant provision is reproduced below:

"26. Issuance of Order.- (1) *On receipt of the comments from the licensee or otherwise and after conducting or having made such inquiry or local inspection conducted as the Forum may consider necessary, and after affording reasonable opportunity of being heard to the parties, the Forum shall take a decision.*

(2) *If, after the completion of the proceedings, the Forum is satisfied that the allegations contained in the grievance are correct, it shall -*

(a) *issue an order to the distribution licensee directing it to do one or more of the following things in a time-bound manner, namely:-*

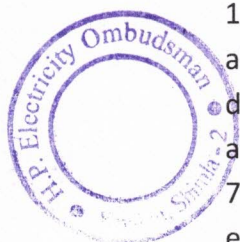
(i) *to remove the cause of grievance in question;*

(ii) *to return to the Complainant the undue charges paid by the Complainant along with the simple interest at the rate of 15 percent per annum, or at such rate as may be fixed by the Commission, for the actual number of days for which the undue disputed amount was withheld by the licensee; or;*"

27. **Prayer:** The Complainant thus prayed **a)** to direct the Respondents not to disconnect electricity of the Complainant or take any kind of coercive action against the Complainant till the disposal of this Complaint, as the Complainant has already deposited a sum equal to 50% of the disputed amount amounting to Rs. 76,06,341/- the detail of which has been reproduced in the above submissions; **b)** to quash the demand notice dated 27.06.2015, the orders passed by CGRF in Complaint no. 1453/3/15/047 and the orders passed in Complaint no. 1453/2/19/020; **c)** to order payment of interest on the refund amount as per applicable rules and regulations reproduced above in these submissions; **d)** to pass any other orders as may fit the facts and circumstances of the case; **e)** cost of Complaint to an extent of Rs. 3,00,000/- and **f)** call for the record of the case.

C – The Respondents' submissions:

1. On the last day of hearing/ arguments, the Respondent No. 3 produced two letters dated 10/02/2021 and 12/02/2021 alongwith a copy of the energy bills issued on 11/02/2021. He also informed that vide letter dated 10/02/2021, they have withdrawn the demand notice dated 31/07/2015 for Rs 1,52,12,681/-. He further informed vide letter dated 12/02/2021 alongwith energy bill dated 11/02/2021 that they have provided a sundry credit for Rs 76,06,341/- deposited by the Complainant as 50% of the disputed amount in the said energy bill.



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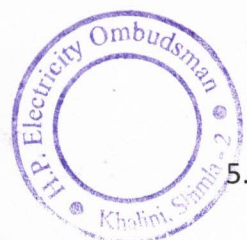
2. Since there was some issue with the Sundry Credit amount shown in the energy bill issued on 11/02/2021 as Rs 75,06,341/- instead of Rs 76,06,341/-, the Respondents were directed vide Interim Order dated 15/02/2021 to clarify the issue and file additional submissions on affidavit.
3. The Respondents filed additional submissions on 02/03/2021 wherein they attached a revised energy bill issued on 17/02/2021 with Sundry Credit for Rs 77,38,209.02 (Rs 76,06,341/- plus Rs 1,31,868.02 on account of LPS).

D – The Complainant’s additional submissions through rejoinder:

1. The Complainant submitted that he repeat, reiterate and confirm all the statements and averment made by him in the Complaint and denied all the statements and averments made in the said reply unless and until the same are specifically admitted by the him.
2. The Complainant submits that the objection of the Respondent on maintainability of the complaint is not explained and well supported as specific points have been raised by them.
3. The Complainant confirmed that the amount of Rs. 76,06,341/- has already been adjusted in the bill issued in the month of February, 2020, to the Complainant during the course of the proceedings in the case before the Hon’ble Ombudsman. This constitutes the amounts deposited as per detail below:

| | | |
|---------------------------------------|------------|------------------------|
| 1) RTGS... No. PUNBR52015090310003708 | 03/09/2015 | Rs. 25,00,000/- |
| 2) RTGS.... No. BARBHI5247818998 | 04/09/2015 | Rs. 11,00,000/- |
| 3) RTGS....No. BARBHI5247845378 | 04/09/2015 | Rs. 5,00,000/- |
| 4) RTGS....No. PUNBR52015090410006104 | 04/09/2015 | Rs. 10,00,000/- |
| 5) RTGS....No. PUNBR52017011813829709 | 18/01/2017 | Rs. 25,06,341/- |
| Total | | Rs. 76,06,341/- |

4. The Complainant denied that the Respondents are not liable to pay interest on these deposits. As per Clause 5.7.3 of the Supply Code, 2009, interest is payable @ 15% per annum on the amount billed in excess to the Consumers. The said amount was added in the bill issued to the Complainant. He further submitted that no exception has been made in the HPERC (CGRF & Ombudsman) Regulations, 2013 to the Respondents for non-payment of interest in such cases. On the other hand the Regulation 26 clearly provides for interest in cases of refund to the consumers. The plea of the Respondents that are not liable to pay interest, is without merits and is null and void in the eyes of law.
5. In view of our submissions, he prayed to allow this Complaint and issue further directions/orders in the matter as prayed for in the complaint.



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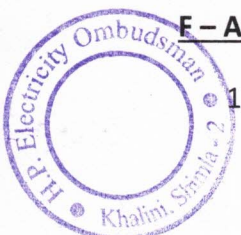


E – CGRF Orders:

1. We have heard both the parties at length. We have carefully gone through the record placed before us and perused the order (Annexure C-5) and (C-6) of the Ld. Authorities. The order of this Forum dated 20/12/2016 clearly and in unambiguous terms, has held that as per reply and statements of Respondents, it is a case of tempering of meter seals and shorting of C.T. secondary's, as such this case falls under section 126 of the Electricity Act, 2003 and is beyond the jurisdiction of this Forum. We are in total agreement with the observations of this Forum made in its order referred above dated 20/12/2016 (Annexure C-5). The facts of the case as presented before of us in the instant Complaint remains the same which were before the Forum earlier in Complaint No.1453/3/15/047 which stood decided as dismissed for want of jurisdiction.
2. Further the order dated 14/03/2019 (Annexure C-6) of Ld. Division Commissioner also held that appeal has not been filed as per requirement of law and hence dismissed. The Complainant has again filed the present Complaint on similar grounds and issues, which were raised before the Authorities earlier. The same stood disposed of on the grounds of jurisdiction by this Forum and on failure to fulfil requirement of law for filing appeal etc. The Complainant failed to make out any case before us to entertain the Complaint, as per provisions of CGRF Rules, 2013, by establishing the fact that it's not a case of tempered meter and indulgence of Complainant in unauthorised use of electricity, as claimed by Respondents.
3. We find it hard to departure from the findings recorded by this Forum in its order (Annexure C-5) dated 20/12/2016 and conclude that the present matter does not fall within the jurisdiction of this Forum, as facts presented before us by the parties are similar, to the facts raised in the earlier Complaint referred above. The Respondents also states that MRI data clearly has shown that meter was tempered. Thus, the matter falls Under Section 126 of Electricity Act, 2003 and this Forum has no jurisdiction to decide such issue as per laid down provisions of law on the matter.
4. Accordingly, within going into the merits of the case, the present Complaint is dismissed for want of Jurisdiction with a liberty to the parties to approach appropriate authority/ courts for redressal of their grievance. The parties are left to bear their own cost. The case is decided neither in favour of Complainant nor in favour of Respondents. The order served on 18/08/2020 is released on 20/08/2020 in open court.

F – Analysis of the Complaint:

1. The case file at Consumer Grievance Redressal Forum has also been requisitioned and gone through.

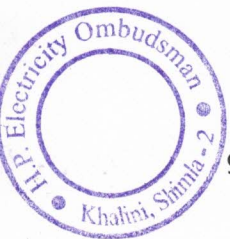


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2. The Complainant is a partnership firm having its factory located under Barotiwala Sub-Division of HPSEB Ltd. having Connected Load of 7400 kW and Contract Demand of 7502 kVA and is being fed through direct tap on 66 kV Parwanoo-Barotiwala line.
3. The Complainant was aggrieved since the year 2015 when the Respondents raised a demand note for Rs 1,52,12,681/- on dated 27/06/2015 received on 30/06/2015 under the provisions of Clause 5.2.5 (b) of Himachal Pradesh Electricity Supply Code 2009 on account of under assessment based on MRI data for August 2014 to May 2015. They also alleged that secondary of 66 kV CT was shorted many times and energy record of the meter has been disturbed/ tempered.
4. The provisions under Clause 5.2.5 (b) states as under:
"The bill for arrears, in case of underassessment or the charges levied as a result of checking etc., will be initially tendered separately, indicating in bill the nature, period of arrears, the number and amount of instalments allowed and the arrear will not be clubbed with the current electricity bill. Subsequently the amount of said arrear bill shall be reflected in the next billing cycle till not paid. For purpose(s) of action(s) of licensee on non-payment of billed amount, the arrear amount shall be accounted as per of final bill due of any billing cycle."
5. The above provisions are applicable in case there are anomalies found on checking like wrong multiplication factor etc but since the Respondent No. 2 had stated tempering of meter, the case was to be processed under Section 126 and assessment was to be made under Section 135 which was not done in the present case.
6. The Complainant approached the Consumer Grievance Redressal Forum vide Complaint No. 1453/3/15/047, dated 01/08/2015 and the case was disposed off on 20/12/2016 stating that the case falls under Section 126 and they lack the jurisdiction.
7. The Complainant then approached the Divisional Commissioner, being the appropriate authority in the matter, vide Complaint No. 28 of 2017 dated 31/01/2017. The Divisional Commissioner also dismissed the case on 14/03/2019 stating that the Respondents never initiated proceedings under Section 126 and also termed the demand note for Rs 1,52,12,681/- as illegal, bad in law and liable to be quashed and set aside.
8. The Complainant again approached the Consumer Grievance Redressal Forum vide Complaint No. 1453/2/19/020, dated 19/06/2019 and the Forum again passed an order that they lack jurisdiction and dismissed the complaint vide orders dated 20/08/2020.
9. The Forum at first instance had treated the case under Section 126 and disposed off the Complaint lacking jurisdiction whereas since the case was not proceeded by Respondent No. 2 as per provision under Section 126, the Forum should have decided the matter on



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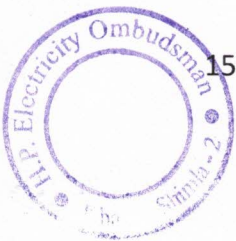


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merits of the case. The Forum again failed to correct the issue when the Complainant approached them again after the Divisional Commissioner disposed off the matter lacking procedure to be followed under Section 126 with additional rider that the demand note is illegal, bad in law and liable to be quashed and set aside.

10. The Consumer Grievance Redressal Forum has not acted in accordance with the provisions/regulations.
11. The Complainant thus approached the Electricity Ombudsman and the present Complaint. The Respondents failed to submit their reply even after several listings of the case but on last date of hearing the Respondent No. 3 produced two letters dated 10/02/2021 and 12/02/2021 alongwith a copy of the energy bills issued on 11/02/2021. He also informed that vide letter dated 10/02/2021, they have withdrawn the demand notice dated 31/07/2015 for Rs 1,52,12,681/-. He further informed vide letter dated 12/02/2021 alongwith energy bill dated 11/02/2021 that they have provided a sundry credit for Rs 76,06,341/- deposited by the Complainant as 50% of the disputed amount in the said energy bill.
12. Since there was some issue with the Sundry Credit amount shown in the energy bill issued on 11/02/2021 as Rs 75,06,341/- instead of Rs 76,06,341/-, the Respondents were directed vide Interim Order dated 15/02/2021 to clarify the issue and file additional submissions on affidavit.
13. The Respondents filed additional submissions on 02/03/2021 wherein they attached a revised energy bill issued on 17/02/2021 with Sundry Credit for Rs 77,38,209.02 (Rs 76,06,341/- plus Rs 1,31,868.02 on account of LPS).
14. Now since the cause of action i.e. demand note dated 27/06/2015 for Rs 1,52,12,681/- on account of underassessment based on MRI data and so called alleged tempering of meter by short circuiting the secondary of the 66 kV CT have been removed by the Respondent Board on their own and Sundry Credit for Rs 76,06,341/- has been given in revised energy bill issued on 17/02/2021 on account of refund of deposit made by the Complainant in respect of 50% of the disputed amount (30% on directions of the Forum and 20% on directions of the Divisional Commissioner), the situation has reverted back to the position occupied prior to 27/06/2015 i.e. when the alleged demand note was issued.
15. Since the situation is reverted back to period occupied prior to 27/06/2015, the amount of Rs 76,06,341/- retained by the Respondent Board since 2015 (Rs 51,00,000/- since September 2015 and Rs 25,06,341/- since 18/07/2017) is very much entitled for simple interest in line with provisions of Clause 5.7.3 of Himachal Pradesh Electricity Supply Code 2009 which states that:



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"If on examination of a complaint, the licensee finds a bill to be erroneous, a revised bill will be issued to the consumer indicating a revised due date of payment, which will not be earlier than ten days from the date of delivery of the revised bill to the consumer. If the amount paid by the consumer under para 5.7.1 is in excess of the revised bill, such excess amount will be refunded through adjustment first against any outstanding amount due to the licensee and then against the amount becoming due to the licensee immediately thereafter. The licensee will pay to such consumer simple interest on the excess amount @ 15 percent per annum, or where the rate is fixed by the Commission at the rate so fixed, on daily basis from the date of payment till such time the excess amount is adjusted."

16. Since the situation has now reverted back to position occupied prior to 27/06/2015, there is no requirement to discuss the matter on merit further.
17. The Respondent Board has informed during last hearing that the higher authorities have decided to pursue the matter under Section 126 separately.

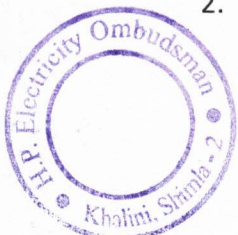
G – Issue in question: Since the demand note dated 27/06/2015 for Rs 1,52,12,681/- has been withdrawn by the Respondent Board and the 50% of so-called disputed amount has also been credited back to Consumer through Sundry Credit in energy bill issued on 17/02/2021, these are not being made issues.

1. **Issue No. 1:** Whether the orders passed on dated 20/08/2020 by the Consumer Grievance Redressal Forum in Complaint No. 1453/2/19/020, dated 19/06/2019 are in line with the provisions of the relevant Rules/ Regulations?
2. **Issue No. 2:** Whether the Complainant is entitled simple interest in line with provisions under Clause 5.7.3 of Himachal Pradesh Electricity Supply Code 2009?

H – Findings on the issues:

Issue No.1:

1. As is evident from the analysis done above, the orders passed on dated 20/08/2020 by the Consumer Grievance Redressal Forum in Complaint No. 1453/2/19/020, dated 19/06/2019 are not in line with the provisions of the relevant Rules/ Regulations.
2. Since the matter was not proceeded by the Respondent No. 2 under Section 126 of the Electricity Act, 2003, the Forum should have decided the matter on merits of the case.



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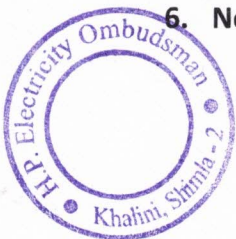
Issue No. 2:

1. As is evident from the analysis done above, since the situation has now reverted back to position occupied prior to demand note dated 27/06/2015 and the Respondent Board has also refunded the 50% of the disputed amount back to Consumer in revised energy bill issued on 17/02/2021, the amount kept by the Respondent Board in excess since September 2015 and 18/07/2017 and now refunded back is fully qualified for simple interest in line with provisions under Clause 5.7.3 of Himachal Pradesh Electricity Supply Code 2009.

I – Order:

1. The orders passed on dated 20/08/2020 by the Consumer Grievance Redressal Forum in Complaint No. 1453/2/19/020, dated 19/06/2019 is quashed and set aside.
2. The Respondents are directed to pay simple interest to the Complainant in line with provisions under Clause 5.7.3 of Himachal Pradesh Electricity Supply Code 2009 w.e. 05/09/2015 and 19/07/2017 for Rs 51,00,000/- and Rs 25,06,341/- respectively within a period of 21 days from the date of issue of this order but not later than 26/03/2021 positively.
3. The Respondents are at liberty to proceed for recovery of under assessed amount in accordance with law.
4. The Respondents are further directed to report Compliance within a period of 30 days from the date of issue of this order but not later than 05/04/2021 positively supported by affidavit duly notarized failing which the case shall be reported to the Commission being violations of the provisions of Regulation 37 (6) of Himachal Pradesh Electricity Regulatory Commission (Consumer Grievances Redressal Forum and Ombudsman) Regulations, 2013 for appropriate action by the Commission under the provisions of the Electricity Act, 2003.
5. The Complaint filed by M/S Kundlas Loh Udyog, Village Balyana, PO Barotiwala, District Solan, HP-174103 is hereby disposed off.
6. No cost to litigation.

Given under my hand and seal of this office.



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Electricity Ombudsman