



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

In the matter of:

M/S Mohan Meakins, Solan Brewery, Solan, District Solan, HP-173220

- Complainant

Vs

- 1. Executive Director (Personal), HPSEB Ltd, Vidyut Bhawan, Shimla-171004**
 - 2. The Sr Executive Engineer, Electrical Division, HPSEB Ltd, Solan, District Solan, HP-173212**
 - 3. The Assistant Executive Engineer (E), Electrical Sub-Division No. 1, HPSEBL, Solan, District Solan, HP-1732312**
- Respondents

Complaint No. 24/2022 (Registered on 06/12/2022)

(Orders reserved on 21/01/2023, Passed on 31/01/2023)

Counsel for:

The Complainant: Sh. Atul Sharma Legal/ Labour Officer

The Respondents: Sh. Anil Kumar God Advocate

CORAM

Er. K.L.Gupta

HP Electricity Ombudsman

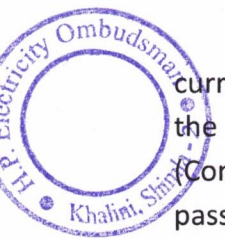
Order

The case was received and registered on 06/12/2022. The case was first listed for 23/12/2022. The Respondents were to file their reply by 20/12/2022 and the Complainant was to file his rejoinder by 23/12/2022. The Respondents filed their reply during the course of hearing on 23/12/2022. The case was listed for hearing on 21/01/2023. Additional documents were filed by the Respondents on 16/01/2023 as directed and the Complainant also filed his rejoinder on 16/01/2023.

Arguments were heard and concluded on 21/01/2023. Orders were reserved.

A – Brief facts of the case:

M/S Mohan Meakins, Solan Brewery, Solan, District Solan, HP-173220 have filed the current application through Sh. Ashok Kumar (hereinafter referred to as 'The Complainant') under the provisions of Regulation 28 (1) (b) of Himachal Pradesh Electricity Regulatory Commission (Consumer Grievances Redressal Forum and Ombudsman) Regulations, 2013 against the orders passed by the Consumer Grievance Redressal Forum at Kasumpti on 14/11/2022 in Complaint No. 1411/3/22/27, dated 04/08/2022. The Complainant has prayed to set aside and quash the orders



Er. K.L.Gupta
31/01/2023



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passed by the Forum below and refund the amount already recovered with interest @ 18% besides cost of litigation and damages amounting to Rs 1,50,000/-.

B – The Complainant’s submissions:

Background:

1. The Complainant submits that he has an industrial power connection (2-part tariff) of 1676 kW of Connected Load with 550 kVA of Contract Demand.
2. The Complainant submits that he applied for temporary reduction of Contract Demand from 550 kVA to 425 kVA in the year 2015 which was processed and effected by the Respondents in the year 2015. Further, that after the revision, the billing was carried out with a billing demand of 425 kVA and demand charges were levied based on 425 kVA.
3. The Complainant further submits that on 28/05/2022, the Respondents issued a demand notice demanding a sum of Rs. 8,78,000/- towards less charged demand charges. The Respondent issued another demand notice dated 13/06/2022, this time correcting the amount to Rs. 8,08,836/-. He objected to the demand notice vide his letter dated 15/06/2022. The objections were not considered by the Respondents and a letter of refusal was issued by the Respondent No. 1. The impugned demand notice dated 13/06/2022 contained the reference of the second amendment dated 31/07/2018, in the Clause 3.10 of the Electricity Supply Code, 2009. The impugned demand notice also stated the period for which arrears were being computed as **01/2020 to 05/2022**, i.e. a period of **29 months**.
4. The Complainant submits that he deposited under protest the arrears demanded vide demand notice, a sum of Rs. 8,08,836 /- under the cover of his letter dated 28/06/2022, vide Cheque No. 428038 dated 28/06/2022 drawn on Punjab National Bank, Solan. The same was acknowledged by the Respondents vide Receipt No. 113600682876 dated 01/07/2022.
5. The Complainant submits that he filed a Complaint before the Consumer Grievance Redressal Forum at Kasumpti Shimla (H.P) vide Complaint No. 1411/3/22/27 dated 04/08/2022 but the Forum did not pay any heed to his Complaint and decided the Complaint against him without even considering his pleadings and decided the same based on conjunctures and surmises and not on the grounds of facts, documents, and pleadings.
6. Further, that he is aggrieved by the prejudiced order of the Consumer Grievance Redressal Forum, now approached the Ld. Ombudsman for redressal of their grievance.



Receipt
31/01/2023

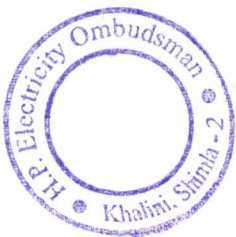


Details of Grievance:

7. The Complainant submits that he is aggrieved by the prejudiced adjudication of the Consumer Grievance Redressal Forum passed in the decision dated: 14/11/2022 in the case titled Mohan Meakin Ltd. vs HPSEBL, decided in favour of Respondent without any concrete proof.
8. The Complainant submits that the demand notices dated: 28/05/2022 amounting to Rs. 8,78,000 /- and dated: 13/06/2022 amounting to Rs. 8,08,836 /- are wrong, void and against the principles of law.
9. The Complainant submits that as per Electricity Supply Code (II Amendment) Regulations, 2018, The Amendment to Clause 3.10 was to be affected from 01/04/2019 and this information was well within the knowledge of the officials of the Respondent. Information was given to them by the Chief Engineer (Commercial) & Senior Executive Engineer (Works) vide intimation letter dated: 25/10/2018. Despite information the Respondents did not execute the amendment and remained sleeping over the matter for 29 months.
10. The Complainant submits that the Contract demand was reduced in the year 2015 and the same was allowed by the Respondent, the bills were duly raised from 2015 to 2022 with the contract demand of 425 kVA. All of sudden the Respondent department raised demand notice demanding 8,78,000/- on dated 28/05/2022 towards less demand charges and correcting demand notice dated: 13/06/2022 with amount of Rs. 8,08,836 /-

Grounds of Appeal:

11. The Complainant submits that he is aggrieved against the findings of the CGRF whereby the Forum has dismissed his Complaint. The Forum has neither appreciated his contentions nor considered the authority of HP High Court titled ***The Executive Director, HPSEBL & others vs M/s Kundlas Loh Udyog & anr.*** wherein it is decided that ***"if the mistake is committed by the officials of the department, then the amount shall be recovered from the erring officials"*** tendered by him. That the Forum appreciated the authority tendered by the Respondent and denied accepting the authority of the High court of Himachal Pradesh given by him, this biased attitude of the Forum has distressed him, which is against the principles of law and natural justice.
12. The Complainant submits that the impugned order dated 14/11/2022 passed by the CGRF in Complaint No. 1411/3/22/27-598-601 is bad in the eyes of law and is liable to be quashed and set aside as the CGRF has not given heed to his contentions and was hell bent upon deciding the matter in favor of the Respondent even when the Ld. Advocate of the Respondent had not uttered a single word and did not argue in support of their case and the total arguments from the side of the Respondent was given by the Ld. Presiding officer of the Forum which is not fair in the eyes of law. The Ld. Forum should have evaluated the



Accepted
31/01/2023



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pleadings of both the sides and not just to favor any one of them. The Forum has committed grave miscarriage of the legal procedure by standing in favour of the Respondent and denying appreciating his pleadings & even not following the principles of law and equity.

13. The Complainant submits that he had sent a letter to the HPSEBL on 23rd June 2015 for the revision of the Contract demand from 550 kVA to 425 kVA and that written communication was duly accepted by HPSEBL on the very same day. Even the request was duly accepted by the department and the billing was initiated based on 425 kVA Contract Demand. This acceptance to reduce Contract Demand on the part of the Respondent vibrantly mean that his request was duly accepted, and Contract Demand was altered. Up till 2022 continuous bills were raised by the Respondent with 425 kVA and all the bills were duly paid by him then how come this much pendency came in view, it is now apparent that the mistake is on the part of the Respondents they are now trying to shift the onus of their mistake over to him which is bad in the eyes of law and they must not be allowed to do so.
14. The Complainant submits that uptill 28/05/2022, he was assured and worriless regarding any matter in electricity Contract Demand as each bill of HPSEBL exhibited the Contract Demand payload of 425 kVA. The matter turned shocking and troublesome for him when the demand notice dated: 28/05/2022 was received from the Respondent and they demanded a sum of Rs. 8,78,000 /- which was again altered to Rs. 8,08,836 /- vide notice dated: 13/06/2022. Further, when all the bills issued by the Respondent were duly and timely paid then how the arrears of this much huge amount accrued. The issue arise here is that the Respondents are at mistake and stood inconsiderate to their duties by staying careless and sleeping over the matter over years. It is not the mistake of the amendment but had the amendment been duly executed well within time he would have taken proper steps of the regulation of the bills.
15. The Complainant submits that he initially protested this undue demand and raised objections vide letter dated: 15/06/2022 but the objections were straightway refused by the Respondents, vide refusal letter dated: 22/06/2022 stating that the amendment was published in the newspaper and opinion from the customers were sought but the Respondent failed to mentioned the date of newspaper and had never invited any opinion from our side, if the Respondents alleged so, then they must produce strict proof of the same. The Hon'ble Supreme Court has ably decided in the matter of **Assistant Excise Commissioner, Kottayam & others vs Esthappan Cherian & Another** that **"A rule or statute cannot be read as retrospective unless it shows a clear or manifest purpose to do so"**.
16. The Complainant submits that he under compelled circumstances had deposited the asked amount under protest on dated: 28/06/2022. Further, that he simultaneously scrutinized the matter and got aware of the fact that all the Chief Engineers of HPSEBL were duly informed by the HPSEBL Chief Engineer (Commercial) as well as The Senior Executive Engineer (Works) vide letter **SERC-23/2018-10123-155** dated: 25/10/2018 regarding the



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31/01/2023



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amendment in the point 3.10 (Temporary revision of contract demand). That despite having due knowledge of the amendment, why the officials of the department remained sleeping over the matter for astonishing period of **29 months**, and kept raising bills with the same contract demand i.e. 425 kVA. Had the bills been raised by them with the amended provisions, the appellant could have planned for the reduction of bills by either permanent reduction or any other probable remedy. The execution of the amendment was to be initiated w.e.f **1st of April 2019** as per the details of abovesaid communication then why the same was not applied as per the instructions and as per the soul of the amendment. Even on this sole ground also the order of the Forum deserves to be set aside and the HPSEBL may be asked the reasons for opting an inconsiderate attitude and burdening him by penalizing and giving sudden shock by their inconsiderate demand notice.

17. The Complainant submits that in the judgement of the Forum, Ld. Presiding officer without even considering his contentions had applied the doctrine of "*Ignorantia juris non excusat*" i.e. Ignorance of law is no excuse, but the Ld. Forum failed to apply the same doctrine to the HPSEBL about the issue that they remained ignorant over the execution of the law for 29 months (01-2022 to 05-2022) and the officials of HPSEBL are accountable for this negligence, not the appellant and such a huge amount has wrongly been seized from him. Further, the Respondents may kindly be directed to refund the amount along with interest, damages, and litigation expenses.
18. The Complainant submits that he has not filed any other appeal on the same or similar grounds against the orders passed by the Consumer Grievances Redressal Forum Shimla dated: 14/11/2022, in the Complaint No. 1411/3/22/27 titled as M/s Mohan Meakin vs HPSEBL except the present appeal. The final order was passed in the Complaint on 14/11/2022 and the copy of the order was received by the appellant on 21/11/2022 and therefore the appeal is being filed well within period of limitation as prescribed under the HPERC (Forum for Electricity Ombudsman) Regulations.
19. The Complainant thus prayed that the appeal may kindly be allowed, and the findings Consumer Grievance Redressal Forum vide order dated 14/11/2022 passed in Complaint No. 1411/3/22/27-598-601 titled as M/s Mohan Meakin Limited vs HPSEBL & others may kindly be set aside and quashed. Further, that the Hon'ble Ombudsman may kindly direct the Respondents to refund the amount, wrongly seized from the appellant and the also order to pay the interest @ 18%, litigation expenses @ Rs. 1,00,000 /- and damages to the tune of Rs. 50,000 /- besides granted any other relief which the Hon'ble Ombudsman may deem fit and just in his favour.

C – The Respondents' submissions:



The Respondents submit that they are functioning as a Distribution Licensee which has been authorised to operate and maintain a distribution system for supplying electricity to the Consumers in state of Himachal Pradesh and a regulated entity under State HPERC

Accepted
31/01/2023



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under sub-section (1) of section 82 of the Electricity Act, 2003. The Regulations framed and notified by the Regulatory Commission are implemented by the Respondent/ HPSEBL in its letter and spirit. Under section 50 of the Electricity Act, 2003 it is provided therein that State Commission shall specify an Electricity Supply Code to provide for recovery of electricity charges. Interval for billing of electricity charges. Disconnection of supply of electricity for non-payment thereof, restoration of supply of electricity etc. Therefore, Electricity Supplying Code, 2009 was made complying with the provisions of the Electricity (Procedure for Previous Publication) Rules, 2005. Further, that the Himachal Pradesh Electricity Commission vide HP Supply Code (2nd Amendment) Regulations, 2018 amended the Regulation 3.10 of the code, with effect from 01/04/2019. Regulation 3.10 after amendment reads as under:

“3.10 temporary revision of contract demand

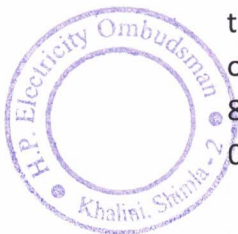
The Consumer to whom two-part tariff is applicable shall be entitled to revise their contract demand within the total sanctioned contract demand without surrendering their lien of the total sanctioned contract demand, subject to the following conditions.

That the Consumer shall not reduce the contract demand to lesser than 50% of the total sanctioned contract demand subject to further condition that the contract demand shall not be reduced below the lowest limit of contract demand as per the tariff category (or any sub-category thereof) application to him

Provided that Consumer shall not be eligible for temporary revision of contract demand to a value other than the full sanctioned contract demand for total period of more than six months in one financial year;

Provided further that in cases involving part period of year e.g. if a Consumer takes the connection or the Consumer gets its permanent sanctioned contract demand revised, during the middle of the year, the adjustment shall be made in pro rata basis.”

2. The Respondents submit that the issues as to whether the regulations framed by the Electricity Regulatory Commission override the existing Contracts or not is not res integra as the Constitution Bench of the Hon'ble Apex Court in the case titled as PTC India Ltd versus Central Electricity Regulation (2014) 4 SCC 603 settled the law on the point wherein it was held that the existing Contracts have to be aligned with the provisions of the Regulations. Further, that the as per the HP Electricity Supply Code, 2nd Amendment Regulation, 2018, a Consumer is entitled to revise their Contract Demand within the sanctioned Contract Demand for total period of six months in a financial year. Further, that unbilled amount w.e.f. 01/01/2020 to 5/2022 to the tune of Rs 8,78,500/- since the original Sanctioned Contract Demand i.e., 550 KVA which has been further revised to Rs. 8,08,836/- has been deposited by the Complainant vide receipt No. 113600682876 dated 01/07/2022. However, from the scrutiny of data, it is found that unbilled amount from



*Receipt
31/01/2022*



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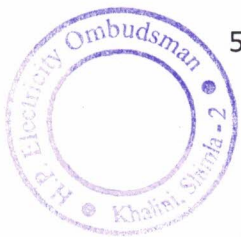
the month April to December, 2019 has not been charged till date & will be charged separately. Further, that the electricity dues cannot partake Contractual obligations in character and being statutory one, Complainant is liable to make the payment of the demand charged without protest. Hence, after coming into force the 2nd Amendment Regulations, 2018, w.e.f. 01/04/2019, a Consumer revise their Contract Demand within the sanctioned Contract Demand for total period of Six months maximum in one financial year. Further, that the Regulatory Commission notified/ published the draft regulations to amend the HP Electricity Supply Code. 2009 in the Rajpatra, HP dated 02/02/2018, as required under sub-section (3) of section 181 of the Electricity Act, 2003, Rule 3 of the Electricity (Procedure for Previous Publication) Rules, 2005 and notice for inviting suggestions and objections from the public and stakeholders was published in the various leading newspapers, The Hon'ble Commission has circulated the draft of the impugned regulations to the Supply Code to the Review Panel, constituted under para 1.3 of the HP Supply Code, 2009 for their consideration and recommendations and the Commission after considering the various suggestions and objections received from the various stakeholders vis-à-vis the comments/ recommendations of the supply code review panel, notified the final 2nd Amendment Regulations on 31/07/2018. Hence, the required procedure had been adopted by the Commission while notifying the amendment which is impugned in the present Complaint as such there is no merits in the Complaint and same is liable to be dismissed.

3. The Respondents submit that as of now since the Complainant has applied for the permanent reduction of the Contract Demand from 550 kVA to 425 kVA and same has been reduced on 20/07/2022 vide sanction letter dated 20/07/2022.
4. The Respondents submit that the Id. Forum has passed well-reasoned and speaking order dated 14/11/2022, wherein the regulatory provisions occupying the filed have been very well appreciated as such there is no further scope for the interference of this Id Ombudsman. Further, that this Id Ombudsman has already disposed off similar complaints wherein, the action of the Respondent/ HPSEBL has been upheld qua the demand on account of the 2nd Amendment (Regulation), 2018 wherein, 3.10 of the HP Electricity Supply Code, 2009 stands amended. The present matter is squarely covered and as such the Complainant/ representation filed by the Complainant deserves only dismissal.

On Merits:-

Reply to the details of the representation, facts giving rise to the representation.

5. The Respondents submit that the detail reply has already been submitted by them before the Id CGRF, for the sake of brevity, same may be read to the part and parcel to the reply under reference. Further, that the since the Id Forum has passed very reasoned and



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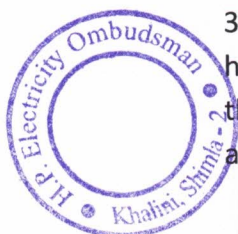
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speaking order dated 14/11/22, there is no scope for further scrutiny of this Id Ombudsman.

6. The Respondents submit that the Id Forum has neither appreciated the contentions nor appreciated the judgment as cited by the Complainant. Further, that the act and conduct of the Respondents are strictly in terms of the mandate of the second amendment to the Supply Code, 2009. Further, that the case referred by the Complainant does not have any application in the facts and circumstances of the present case, as it is settled law that each and every case has to be decided on its peculiar facts. The Complainant has miserably failed to appreciate this vital of law and just making his submissions in air, which are not sustainable in the eyes of law. The Second Amendment to the Electricity Supply Code, 2009 which took place in the year of 2018, was carried strictly in terms of the mandate of law and ignorance of the law cannot be the excuse. The representation has been filed by the Complainant just on the surmises and conjectures as such the same is liable to be dismissed.
7. The Respondents submit that in the year of 2015, the Complainant had temporarily revised its Contract Demand from 550 kVA to 425 kVA taking benefit of the 1st Amendment, 2014. When the second amendment to the supply Code, 2009 was taken place in the year of 2018, as per the mandate of the law, each and every contract were required to be aligned with the mandate of the regulations, as such, the impugned demand was issued to the Complainant.
8. The Respondents submit that as submitted herein above, as necessary corollary to the 2nd Amendment Regulations, 2018, Complainant was entitled for only six months benefit of the temporary Contract Demand in one financial year, Hence, the impugned demand notice issued by the Respondent cannot be termed as bad in law and further, the Id Forum has adjudicated this issued in a detailed manner and has appreciated the contentions of the rival parties and considered the regulatory provisions while passing the impugned order dated 14/11/2022, as such the instant representation is not maintainable and liable to be dismissed.
9. The Respondents thus prayed that the representation filed by the Complainant being meritless, may kindly be dismissed.

D – The Complainant’s additional submissions through rejoinder:

1. The Complainant submits that the first two pages of the reply of the Respondent are mere introduction of the Respondents and they have emphasized upon the amended regulation 3.10 of the HP supply Code (2nd Amendment) Regulations, 2018, the contents of the same have been distorted and misconstrued by the Respondents as per their convenience, hence they are denied as he had applied for the temporary reduction much earlier to the said 2nd amendment. The amendment made by the legislative body is not the matter in issue, but



Accepted
31/01/2023



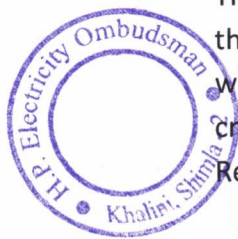
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issue is the carelessness of the Respondents for retrospective application of amendment due to their own negligence. Neither any amendment was communicated to the appellants nor the bills were issued on time despite due knowledge. There is no reference of any relaxation to the Respondents in the amendment to stay dormant for many years and then suddenly raise demand notices. Further, that the contents of page No.3 of the reply are again very ambiguous as the Respondents have orally stated that the regulatory commission had circulated the draft regulation in various newspapers and suggestions and objections were invited. Prima facie, the Respondents have failed to produce any newspaper or notice which substantiates the claim made by the Respondents, which means that the contentions made by the Respondents are unsubstantiated and do not deserve to be considered by the Hon'ble court as the same are wrong and baseless.

The present case of illegal demand raised by the Respondent is totally wrong. The present claim is baseless claim of the Respondents and the appellant are ready to contest any level, because it is widely known phrase that *"Wrong does not cease to be wrong because the majority share in it."* Rest of the contents of the reply are wrong and denied in toto.

2. The Complainant submit that the contents of para no.2 of the reply are again wrong and deceptive in nature, wherein the Respondents have stated that *"As per the HP Electricity supply code, 2nd Amendment Regulations, 2018 a Consumer is entitled to revise their contract demand for a total period of six months"* In this regard when the amendment was suitably in the knowledge of the Respondents then why they failed to raise the appropriate bills complying with the provisions of amended Contract Demand and was it his duty to ask them to raise appropriate bills as per amended law? If not, then it was the prior duty of the Respondents only to convey it to him but they miserably failed to perform their duty and now making excuses to cover up their own fault. This casual attitude shows carelessness on the part of the Respondent and this careless attitude has been closely observed by the Division bench of the Hon'ble High Court of Himachal Pradesh in the recent judgement dated: 23/12/2022 of THE EXECUTIVE DIRECTOR (PERSONNEL) HPSEBL AND ANOTHER vs M/S VIRGO ALUMINIUM LTD wherein Hon'ble High Court has directed the Electricity board to refund an amount of Rs. 56,66,000 /- to M/s Virgo Aluminum the court in this case observed that ***"Clearly, the instant appeal has been filed by the Board to shield its erring officials/officers and impliedly to get a clean chit from this court, but we are not inclined to do so because of not only the negligent but even the cantankerous attitude of the appellant-Board"*** which means that the Electricity board is totally careless in performing the routine duties and now the same has been certified by the Hon'ble High Court of Himachal Pradesh in the quoted case.

The Complainant submits that in addition to this the Respondents have alleged in the reply that the unbilled amount was calculated by the Respondents to the sum of Rs. 8,78,500 /- which was reduced to Rs. 8,08,836 on his request vide letter dated: 15/06/2022, which is a crystal-clear untrue statement. To attest the falsification of this very statement of the Respondent, the letter dated: 15/06/2022 is annexed herewith and the Ld. Ombudsman





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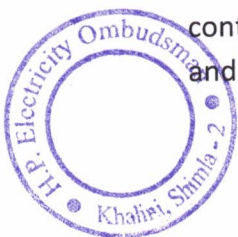
Court may clearly perceive that no such statement to reduce the amount to Rs. 8,08,836 /- was made from his side. The alteration in amount was the result of poor calculations made by the Respondents and the extreme negligence by the officials of the Respondents which the Hon'ble High court also pointed out.

Further, that it is very astonishing to witness that in order to further harass him for filing the present appeal and to misuse the position and powers of the Respondents, they have again issued a notice to him, received on 30/12/2022 vide which they have again demanded an additional amount of Rs. 2,53,125 /- and proved their incapacity to issue a clear notice in a single instance, this one is the third notice with same subject matter and cause of action, this is what is really called unfortunate in calculations and still it is not confirmed that this one is the final notice. They may again issue some other notice in the coming days and could again blatantly say that previous one was mistaken and again he has to pay additional amount of whatever they ask for besides suffering harassment. This would be an endless process until the Hon'ble court of Ombudsman directs them to stop such careless and inconsiderate exercise of continuous notice games.

3. The Complainant submits that the contents of the point no. 3 of the reply are again very wrong, astonishing, worth criticizing and untenable as the Respondents in this para are directing the Ld. Ombudsman to not to cause any interference in the order of the forum. Further, he states that Respondents are no authority to direct the Ld. Ombudsman in any manner whatsoever regarding any interference in any order. Using the word 'interference' is undignified and discouraging, rather adjudication of matters by appellate authorities is the hierarchical process of adjudication of Complaints. The Ld. Presiding Appellate Officer has the liberty to adjudicate, overrule or set aside any wrong order of the authority inferior to it and the parties to the Complaint or the Appeal have no right to direct the court to interfere in an order. The contents of every Complaint/Appeal are different and no case is completely identical and there is always scope of adjudication according to the fine sense of judgement of the presiding officer.

Rejoinder to the reply filed on merits:

4. The Complainant submits that the contents of both these paras of the reply of the Respondents are mere denial and contain proposal that the reply filed before the Ld. CGRF is to be taken into consideration, which mean that the Respondents failed to file an appropriate reply to his contentions in the present appeal and just intend to repeat the previous contentions. Further, it is denied that the reply filed by the Respondent before the forum below matches the contentions filed before the Ld. Ombudsman. Therefore, all the contents of reply filed against para 1.1 to 1.6 & para 2.1 to 2.4 are denied being baseless and unreasonable.



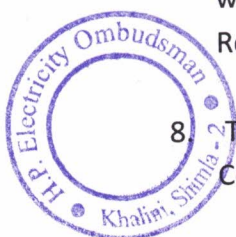
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Rejoinder to the reply to the grounds of appeal:

5. The Complainant submits that the baseless contents of reply that all the provisions of the Electricity Supply code have been followed and the acts and conduct of the Respondent are strictly in terms of the said Electricity Supply code, are very wrong and deserves total denial. The Respondents are acting in the most obstinate manner and considering themselves to be over & above the provisions of law. Further, it is admitted that the ignorance of law is no excuse but is the same principal excusable for the Respondents? and are they at liberty to even infringe the basic principles rendered by the Constitution of India? Further, that for a single bill calculation, how many repetitions are allowed to the Respondents and how much rest time is available to the Respondents? Earlier it was a slumber of 29 months when the Complaint was filed and even during that period of 29 months, the electricity bills were duly raised by the Respondents but now again a dormant notice to pay additional amount has been raised by the Respondents and there is no hearing for him. There is even probability that the Respondents may keep on raising such claims of lakhs of rupees in future also but he has to remain silent over this tyranny because of unjustified protection being given to the Respondent. Hon'ble High court of HP has rightly dismissed the appeal of the Respondents considering the tyranny of the Respondent in the said case of The Executive Director (personnel) HPSEBL and another vs M/S Virgo Aluminium Ltd and justified that ignorance of law is not even an excuse for the Respondents.
6. The Complainant submits that the contents of this para of the reply "*In the year of 2015, Complainant had temporarily revised the Contract demand from 550kVA to 425 kVA*" are true as the same was reduced in the year 2015 and the same was permitted by the Respondent. The bills were duly raised from 2015 to 2022 with the Contract Demand of 425 kVA and there was no issue at all with the Respondents and they duly raised bills and never raised any issue regarding payments of the same. Then how come suddenly the Respondent departments raised demand notice demanding Rs. 8,78,000/- on dated 28/05/2022 towards less demand charges and new notice with correction dated: 13/06/2022 with amount of Rs. 8,08,836/- was raised. This action clearly shows default on the part of the Respondents.
7. The Complainant denied that he was entitled for six months benefit only. If this was the case then what stopped the Respondents from raising enhanced bill after the expiry of six months. The Respondents peacefully and duly raised continuous bills with scheduled 425 kVA monthly and he made all the payment of bills well within time. The Respondents were very much napping over the matter and despite having due knowledge they remained ignorant and neither raised any notice nor any bill with amended provisions. Probably they were waiting for the audit objection which actually interrupted the slumber of the Respondents and now just for saving their skin, they are giving lame excuses over and again.
8. The Complainant thus prayed that the appeal may kindly be allowed, and the findings of Consumer Grievance Redressal Forum vide order dated 14/11/2022 passed in Complaint



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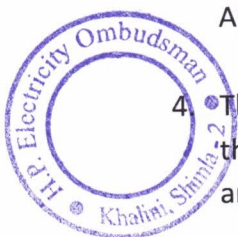


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No.1411/3/22/27-598-601 titled as M/s Mohan Meakin Limited vs HPSEBL & others may kindly be set aside. Further, that the Hon'ble Ombudsman may kindly direct the Respondents to refund the amount, wrongly seized from him and the also pass a stay order against the newly raised notice ESS-1/RAO-Audit/2022-23-2129-30 dated: 23/12/2022 in the interest of justice and equity. Further, any other relief which the Hon'ble Ombudsman may deem fit and just in favour of the appellant may kindly be granted.

E - CGRF Order:

1. This Forum has examined the relevant provisions of the Electricity Act, 2003, various relevant Regulations framed by the HP Electricity Regulatory Commission (or the HPERC) including relevant provisions of HPERC (Consumer Grievances Redressal Forum and Ombudsman) Regulations, 2013 and the HP Electricity Supply Code, 2009 (or the Supply Code, 2009 or the Supply Code or the Code) including amendments thereto, record and facts along-with pleadings of the parties. We have heard the parties at length. The considered opinion of the Forum has been gathered after examining and analyzing fair facts, evidences and correspondence placed on record and arguments adduced by both the parties;
2. At the outset, this Forum observes that the Complainant has raised the instant complaint by simply reproducing certain provisions of the Himachal Pradesh Electricity Supply Code (Second Amendment) Regulations, 2018 notified on 31.07.2018 which came into effect from 01.04.2019 and by irrationally arguing on untenable propositions that because he had sought Temporary reduction of Contract Demand (in kVA or MVA) in the year 2015 therefore, the ibid Supply Code 2nd Amendment is not applicable to the Complainant but is applicable only to any future Temporary Contract Demand (in kVA or MVA). The Complainant has further argued that ibid Supply Code 2nd Amendment no-where states that the Consumers who were being billed on the basis of Temporary Contract Demand, prior to the notification of the ibid 2nd Amendment, shall fall into the purview of the new mechanism;
3. This Forum finds that the Complainant has failed to set-up the legal basis of his arguments in the complaint. The Complainant has misconceived and mis-appreciated the fact that the ibid Supply Code 2nd Amendment notified on 31.07.2018 is not applicable to him as he had revised / applied for Temporary Contract Demand (in kVA or MVA) before the enactment of ibid Supply Code 2nd Amendment, 2018. However, the Rejoinder filed by the Complainant refers to the issue of retrospective application of ibid Supply Code 2nd Amendment, 2018. Thus primarily, the issue of retrospective application of ibid 2nd Amendment' has emerged for determination;
4. This Forum, before proceeding with the ibid issue that has come up for determination in the instant complaint, considers it necessary and expedient to refer to certain relevant amendments to the HP Electricity Supply Code, 2009 enacted by the HP Electricity



Accepted
31/01/2023



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Regulatory Commission (or the HPERC). The Supply Code, 2009 was notified by the HPERC on 26th May, 2009. Later Amendments were carried out from time to time. We mainly refer to amendments pertinent in the instant matter with regard to 'Temporary' revision of Contract Demand. The said amendments were first introduced by the HP Electricity Regulatory Commission (or the HPERC) vide Himachal Pradesh Electricity Supply Code (First Amendment) Regulations, 2014 notified on 11th June, 2014. In this amendment Code 3.10 was first inserted. Thereafter, amendment to this Code 3.10 was carried out by the HPERC vide the Himachal Pradesh Electricity Supply Code (Second Amendment) Regulations, 2018 notified on 31.07.2018. For the sake of clarity, relevant extracts of these amendments are reproduced here-in under:-

(A) Himachal Pradesh Electricity Supply Code (First Amendment) Regulations, 2014 dated 11.06.2014 -

Quote

10. Insertion of para 3.10.- In the said Code, the following para 3.10 shall be inserted; namely:-

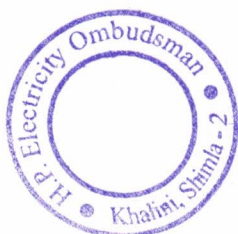
"3.10 Temporary revision of contract demand.- The Consumers to whom two part tariff is applicable shall be entitled to revise their contract demand within the total sanctioned contract demand without surrendering their lien of the total sanctioned contract demand, subject to the following condition- 10

(a) that the Consumer shall not reduce the contract demand to lesser than 50% of the total sanctioned contract demand subject to a further condition that the contract demand shall not be reduced below the lowest limit of contract demand as per the tariff category (or any sub-category thereof) applicable to him;

(b) that the Consumer shall not be entitled to revise the contract demand more than twice a year subject to the condition that the time gap between two successive revisions shall not be less than 3 months;

(c) that the Consumer shall give a notice of at least one month to the licensee before revising the contract demand under this mechanism. Even though the Consumer shall not be required to obtain any sanction from the licensee for change in contract demand under this mechanism, he, so as to avoid the disputes, shall ensure that the notice(s) for such revision are duly served by him upon the licensee through registered post or through courier service or is delivered by hand against signed receipt therefor;

(d) that in cases where the contract demand is reduced under this mechanism, such reduced contract demand shall be applicable for billing purposes; and



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HIMACHAL PRADESH ELECTRICITY OMBUDSMAN
SHARMA SADAN, BEHIND KEONTHAL COMPLEX, SHIMLA-171002
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(e) that in cases where the Consumer gets his contract demand reduced permanently, the limit under clause (a) shall be considered with respect to such reduced contract demand, but such reduction shall not be considered to have been made under this mechanism and the time gap of 3 months as per clause (b) shall be reckoned from the date from which the demand was last revised under this mechanism.

Illustration.- If a Consumer who is having sanctioned contract demand of 10 MVA temporarily revises the contract demand to 6 MVA w.e.f. 01.08.2014 under this mechanism but gets his sanctioned contract demand permanently reduced to 8 MVA w.e.f. 01.09.2014, he shall have to pay charges based on 6 MVA contract demand till 31.10.2014 (i.e. till the expiry of 3 months period from the date at which the contract demand was last revised i.e. from 01.08.2014). However, if the contract demand is to be reduced permanently to lesser than 6 MVA (say 4 MVA as on 01.09.2014), the demand charges would have been based on a contract demand of 4 MVA during the period upto 31.10.2014."

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(B) Himachal Pradesh Electricity Supply Code (Second Amendment) Regulations, 2018 dated 31.07.2018-

Quote

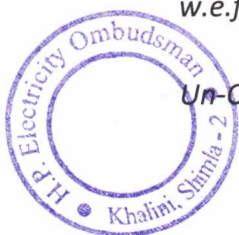
3. Amendment of para 3.10:- For the sign ";" occurring after clause (a) of para 3.10 of the said Code, the sign ":" shall be substituted and thereafter the following provisos shall be inserted, namely:-

"Provided that the Consumer shall not be eligible for temporary revision of contract demand to a value other than the full sanctioned contract demand for a total period of more than six months in one financial year:

Provided further that in cases involving part period of a year e.g. if a Consumer takes the connection, or the Consumer gets his permanent sanctioned contract demand revised, during the middle of a year, the adjustments shall be made on pro-rata basis.

Note: The Distribution Licensee shall, immediately after the publication of the Himachal Pradesh Electricity Supply Code (Second Amendment) Regulations, 2018, in the Rajpatra, Himachal Pradesh, issue suitable detailed procedural instructions within the framework of the above provisions to its field units for the smooth implementation of aforesaid provisions w.e.f 01.04.2019."

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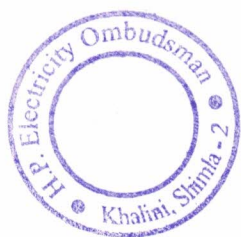


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5. Before proceeding to determine the aforementioned primary issue of retrospective application of Supply Code 2nd Amendment, arising in the instant complaint, this Forum also considers it pertinent to briefly delve into the working of the Contract Demand (in KVA/ or MVA). It is apparent that the Contract Demand is a provision of the Electricity Supply Code and the Tariff Orders. It is a Demand (in KVA/ or MVA) contracted by the Consumer at the time of his original application for connection, which is also subjected to permissible revisions during the life of the connection strictly in accordance with the provisions of the Supply Code, 2009. This Contract Demand is applied for, by the Consumer and sanctioned by the licensee, inter-alia with the underlying purposes of determining the Standard Supply Voltages at the time of connection, for billing of the Consumer etc. The original Contract Demand is of 'Permanent' nature and the subsequent revisions at the option of the Consumer may be of 'Permanent' or of 'Temporary' nature which are regulated in accordance with the provisions of the Supply Code and further applied in accordance with the provisions of various Regulations / Codes enacted by the HPERC. This Contract Demand (in KVA or MVA) serves as a reference vis-à-vis the actual maximum Demand (in KVA or MVA) recorded on the meter during the times of electricity consumption and is applied towards the billing of the Consumer or other matters, as may be prescribed by way of HPERC Regulations / Supply Code. When the Supply Code regulates the revision of Contract Demand (in kVA or MVA), the concerned Consumer is expected to keep a strict vigil on his electricity consumption patterns by managing the peaks of his maximum Demands (in KVA or MVA), simultaneously also keeping a vigil and managing / revising his Contract Demand (in kVA or MVA) from time-to-time so as to keep both in synchronization and consequently the optimization of its electricity bills;
6. The Supply Code 1st Amendment dated 11.06.2014 stipulated various conditions for Temporary revision of Contract Demand (in KVA or MVA) and these were first introduced here by insertion of Code '3.10 Temporary revision of contract demand'. This Code was later amended vide Supply Code amendment dated 31.07.2018, when certain Provisos were added to it. This 1st amendment, 2014 provided for limits of revision, number of revisions in a year, gap between successive revisions etc. The subsequent amendment of Supply Code (ie Supply Code 2nd Amendment) notified on 31.07.2018 introduced certain 'Provisos' to Code 3.10. The Provisos specifically provided for total period of 6 months of Temporary contract demand (in KVA or MVA) in a 'Financial Year'. This 2nd amendment came into force from 01.04.2019. It is pertinent to mention here that with regard to ibid 'Temporary revision of contract demand', the key word in the said proviso / amendment is the 'financial year'. It is undisputed that the financial year starts from 01st of April and ends on 31st of March. Accordingly, it becomes clear from the said amendments that on 31st March of each financial year, the 'Temporary Contract Demand', as existing previously shall expire. From the 1st of April of the subsequent financial year, the Contract Demand would get reset to the Permanent Contract Demand (in KVA or MVA) unless the Temporary Contract Demand is re-applied by the Consumer. Therefore, in our considered view, a Consumer would be required to apply afresh for re-revision of his Temporary Contract Demand (in KVA or MVA) in any new financial year, else a previously existing Temporary



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Contract Demand (sanctioned or deemed sanctioned) shall automatically get reset to the last sanctioned Permanent Contract Demand (in KVA or MVA) which was also initially / previously applied for by the Consumer and sanctioned by the distribution licensee;

7. From the foregoing implications of express provisions of 'Code 3.10 Temporary revision of contract demand' (or Temporary Contract Demand) (in KVA or MVA) as prescribed in the Supply Code 2nd Amendment, 2018, this Forum holds that after 01.04.2019, i.e when the financial year starts, any monetary demand (in Rs) raised by the Respondent HPSEBL based on a Temporary Contract Demand (in KVA or MVA) existing prior to 01.04.2019, can only be with regard to electricity consumption done prior to 01.04.2019. For electricity consumption occurring after 01.04.2019, such monetary demand (in Rs) shall necessarily have to be based on Temporary Contract Demand (in KVA or MVA), if such is reapplied. In absence of such re-application, this monetary demand automatically gets based upon Permanent sanctioned Contract Demand which was last applied. This process shall follow for each / new financial year;
8. In view of above amended provisions and observations, this Forum arrives at a logical conclusion that question of Retrospective application of Supply Code 2nd Amendment, 2018 by the Respondent HPSEBL shall arise only, if a monetary demand is raised by the Respondent HPSEBL after 01.04.2019 for any electricity consumption period/ electricity billing prior to 01.04.2019. Thus, no question of such retrospective application or effect of ibid Supply Code 2nd amendment, 2018 arises, if a monetary demand is raised by the Respondent HPSEBL after 01.04.2019 for any electricity consumption period after 01.04.2019. This monetary demand is based on the condition of 'financial year' as applied to Temporary Contract Demand (in kVA or MVA) contained in the amended provisions of Code 3.10 of the Supply Code, 2009 2nd Amendment, 2018 ibid.
9. This Forum in the facts and circumstances of the case, safely sums up that any Temporary Revision of Contract Demand (in kVA or MVA) that may have existed in the past before 01.04.2019 shall cease to remain effective beyond 01.04.2019. Therefore, the Consumer shall have to apply afresh for a 'Temporary Contract Demand' beyond 01.04.2019, if he so requires and in absence of such revision or re-application, the only Contract Demand that automatically survives in accordance with the Supply Code 2nd Amendment is the 'Permanent Contract Demand' (in kVA or MVA) on the basis of which further billing can be done or any monetary demand can be raised by the distribution licensee. When concerned Consumer does not apply afresh or does not revise his Contract Demand after 01.04.2019, then any Temporary revision of Contract Demand or 'Temporary Contract Demand' (in KVA or MVA) sought before 01.04.2019, such shall deem to get reset to the sanctioned 'Permanent Contract Demand' (in KVA or MVA) from this date onwards, till such time a fresh application for Temporary revision of contract demand or 'Temporary Contract Demand' (in KVA or MVA) is received from Consumer and/or sanctioned by the Respondent. This process shall follow for each financial year beyond 01.04.2019 and accordingly all



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matters of electricity billing shall be dealt vis-à-vis this 'Permanent Contract Demand' (in KVA or MVA) under such a condition;

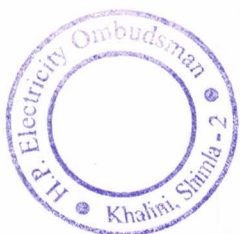
10. Now coming to the instant complaint, it is observed by this Forum that the Complainant had temporarily revised his Contract Demand to 425 kVA (Temporary Contract Demand) in the year 2015 and thereafter, it had not revised or applied afresh for this 'Temporary Contract Demand' (in KVA or MVA) even after the enforcement of the Supply Code 2nd Amendment notified on 31.07.2018. Eventually on an application by the Complainant, sanction for Permanent reduction of Contract Demand was done by the Respondent HPSEBL to the same value of ibid 425 kVA only on 20.07.2022. Consequently, the Respondent HPSEBL raised the monetary demand to the Complainant of Rs 8,08,836/= vide Demand Notice placed on record (Annexure C-2) on account of Supply Code 2nd Amendment, 2018, only for those periods (January 2020 to May 2022) of electricity consumption occurring after 01.04.2019. This fact has not been denied by the Complainant. Therefore, the plea of the Complainant to this effect that the application of the amended provisions of the Supply Code, 2009, vide Supply Code 2nd Amendment, 2018, are being made retrospectively by the Respondent HPSEBL is wrong, far-fetched and not tenable in face of express provisions of the Supply Code 2nd Amendment ibid. Thus, the contention of the Complainant that the Supply Code 2nd Amendment is not applicable to him is outrightly rejected by the Forum as being grossly misplaced and wrong;
11. The Complainant has further contested that the ibid Supply Code 2nd Amendment was not implemented as per Instructions of Amendment as can be seen from Respondent HPSEBL letter of instructions to the field units on 25.10.2018 (Annexure C-6). Further, the Complainant has relied upon this letter of the Respondent HPSEBL dated 25.10.2018 (Annexure C-6) addressed to its field units, to state that the field units did not implement these instructions;
12. This Forum finds that the ibid letter of instructions dated 25.10.2018 (Annexure C-6) addressed to its field units was written by the Respondent HPSEBL to its field units in accordance with the instructions contained in the ibid Supply Code 2nd Amendment, 2018. However, reliance of the Complainant on the instructions imparted by the Respondent HPSEBL to the field units vide ibid letter which are limited to conditions within a financial year, are therefore of no help to the case of the Complainant which is in terms of transition of the financial year / boundary conditions of the start and the end of the financial year. In accordance with the Supply Code 2nd Amendment, the end of the financial year is signified by the date of 31st March of the year and this is not denied by the Complainant. On this end date the 'Temporary Contract Demand' as existing, shall deem to expire or cease to exist. Thus, from the start of the next financial year as being 01st April, which is also not denied by the Complainant, the concerned Consumer shall be expected to apply afresh for the Temporary Contract Demand (in KVA or MVA) if he so intends. In the instant complaint, the Complainant had failed to apply afresh for the 'Temporary Contract Demand' from 01.04.2019 onwards;



Accepted
31/01/2023



13. Therefore it can be safely concluded that there is no retrospective application of the Supply Code 2nd Amendment, 2018 by the Respondent HPSEBL as wrongly perceived by the Complainant but it is his own fault of not re-applying for a fresh 'Temporary Contract Demand' beyond 01.04.2019 and that he has wrongly raised the instant dispute. The contention of the Complainant with regard to Respondent not adhering to instructions of the 2nd Amendment and the field units not adhering to the instruction of the Respondent HPSEBL, is found to be misplaced and is therefore rejected;
14. The Forum also finds the arguments of Complainant as untenable, that the Respondent should have issued Notices to the Consumers for the revision of Contract Demand. It is a settled proposition that ignorance of law is no excuse. The fact is undisputed that change of law through amendments is done after following due process. The present 2nd Amendment, 2018 to Supply Code has been effected by the HPERC after inviting public/objections etc from all stake holders. The said amendments after enactment were notified and published in official gazette for the knowledge of public/stake holders at large. It is safely presumed and expected that all stake holders / public including the Complainant are well aware of the said amendment. Thus, there is no requirement of any prior notice to raise monetary demand (in Rs) as per amended provisions of the Code and the contention of the Complainant to this effect is patently wrong, misplaced and is accordingly rejected. Monetary demands based upon Statutes, Regulations/ Codes notified by the HPERC and on Tariff Orders passed by the Ld HPERC, cannot be held to be illegal. Thus pleas of the Complainant are naive, flimsy and devoid of any substance and not tenable in facts and circumstances narrated above;
15. The present complaint under adjudication, relates mainly to the undeniable fact and circumstances, where the Complainant has failed to adhere to the amended provisions of Supply Code, 2018 by not keeping vigil on the change in law. As already discussed in paras supra that change in statute through a due process of law, especially when the amendments are made public, does not require its intimation to the Consumer or the Complainant separately neither is it imperative upon the Respondent HPSEBL to inform its Consumers individually. We further observe that there is no statutory requirement under the Supply Code with regard to prior intimation by the HPSEBL to the Consumers of amendments made in law. The Forum is of considered view that it is incumbent upon the Consumer /Complainant to exercise due diligence to keep strict vigil especially in respect of change in law being affected by the HPERC through an open transparent due process. Thus Complainant ought to have appropriately revised its 'Contract Demand' in pursuance to the Supply Code 2nd Amendment, 2018. The 'Note' at the end of Code 3.10 of the Supply Code 2nd Amendment, 2018 is merely in terms of issuing of detailed procedural instructions by the 'Distribution Licensee' i.e the HPSEBL to its field units and not to the Consumers at large. It is also otherwise impractical and illogical to assume intimation of each and every Consumer of amendments which are notified in Official Gazette and uploaded on the website of HPERC for knowledge of Consumers at large;



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16. The Complainant during the course of arguments admitted that the amended provisions of Code 3.10 of the Supply Code, 2009 2nd Amendment notified on 31.07.2018 with regard to the Temporary revision of Contract Demand, had not been applied by the Respondent HPSEBL on the electricity consumption existing prior to 01.04.2019. This admitted fact is also evident from details attached with the 'Demand Notice' dated 13.06.2022 (Annexure C-2) which clearly depicts the period for which the monetary demand was raised, as being January 2020 to May 2022. Thus, on this score alone the complaint deserves to be dismissed as it cannot be held that there is retrospective application of ibid 2nd Amendment;
17. The Complainant has relied upon Judgment passed by Hon'ble HP High Court of HP in CWP No 2319 of 2018 on 03.11.2020 (Annexure C-7) in a case titled as The Executive Director (Pers). Himachal Pradesh State Electricity Board Ltd & ors Vs M/s Kundlas Loh Udyog & anr where in per Complainant, it has been held that the implementing officers should bear such omissions and losses and not the Consumer or the Board;
18. The Forum after examination finds that the ibid Judgment dated 03.11.2020 passed by the Hon'ble High Court is of no help to the Complainant for the sole reason that facts of the ibid case are different from the facts of present complaint. In said matter before the Hon'ble Court, the main issue was that of Interest / Penal Interest on Security Deposit which was payable to the Consumer by the distribution licensee HPSEBL, being the petitioner in that writ. Whereas, the instant complaint is with regard to a statutory monetary demand raised by the Respondent HPSEBL in terms of prospective application of the Supply Code, 2nd Amendment notified on 31.07.2018 payable by the Complainant as per provisions of the Supply Code. The Complainant has no-where laid challenge to the correctness of the monetary demand raised by the Respondent HPSEBL. To raise a monetary demand by the Respondent HPSEBL based upon statutory provisions, cannot be held to be an error or omission or as being contrary to the Code;
19. It is evident from the observations made here-in-above, that the instant complaint pertains to non-application /non-revision of Contract Demand (in kVA or MVA) on Temporary basis i.e Temporary Reduction of Contract Demand after 01.04.2019 by the Complainant. This resulted in Permanent Contract Demand (in kVA or MVA) automatically becoming the basis for raising of a net monetary demand by the Respondent HPSEBL on 13.06.2022 (Annexure C-2) for Rs 8,08,836/=. It would be seen that the Complainant had eventually corrected this mistake of his by revising his Contract Demand (in KVA or MVA) on Permanent basis, which was sanctioned on 20.07.2022 by the Respondent. This monetary demand is for the consumptions done in the financial years after 01.04.2019 based on the Supply Code 2nd Amendment, 2018 notified on 31.07.2018;
20. This Forum is not inclined to accept the arguments extended by the Complainant. There is no force in the arguments of the Complainant that amended provisions of Code 3.10 of Supply Code 2nd Amendment, 2018 are not applicable to him. It is also not tenable that



Accepted
31/01/2023



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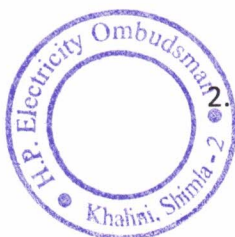
applicability of amended provisions with effect from January 2020 to May 2022 amounts to giving retrospective effect to the Supply Code 2nd Amendment, 2018. From the observations made above, it is established and safely held that the ibid 2nd Amendment, 2018 is effectively applicable to the Consumers / Complainant, with effect from 01.04.2019. We find no substance in assertions by the Complainant in the facts and circumstances of the case discussed above that the monetary demands (in Rs) have been raised by the Respondent HPSEBL by way of retrospective application of or by giving retrospective effect to the amended Code 3.10 of Supply Code 2nd Amendment notified on 31.07.2018;

21. Further, when the impugned Demand Notice dated 13.06.2022 (Annexure C-2), is examined, it becomes evident that the Respondent HPSEBL has applied the provisions of ibid Code 3.10 of second (2nd) amendment notified on 31.07.2018 (effective 01.04.2019) only for the period from January 2020 to May 2022 (29 months). These provisions have not been applied for the period from 01st April 2019 (i.e when the ibid 2nd amendment became effective) to 31st December, 2019 (9 months) for reasons best known to the Respondents, especially when the Complainant had failed to revise his Contract Demand (in kVA or MVA) either on Temporary or on Permanent basis for this period as well, which was eventually done only on 20.07.2022. As per record before the Forum, the action of the Respondent appears to be partial in compliance to the express provisions of Himachal Pradesh Electricity Supply Code (Second Amendment) Regulations, 2018 dated 31.07.2018;
22. In view of the discussions and observations made here-in-above, the present complaint preferred by the Complainant is found to be devoid of any substance and merits and deserves to be dismissed / rejected. We find no illegality in the Demand Notice dated 13.06.2022 (Annexure C2) raised by the Respondent HPSEBL which has been issued in terms of the amended provisions of the Supply Code, 2009 i.e Code 3.10 vide amendment notified on 01.07.2018 to be effective from 01.04.2019. The Demand Notice Annexure C-2 is accordingly upheld.
23. In the aforesaid terms, the complaint being devoid of substance and merits is rejected. The complaint is accordingly decided on merits against the Complainant and in favour of the Respondents HPSEBL and stand disposed of as dismissed.

F – Analysis of the Complaint:

1. The case file bearing Complaint No. 1411/3/22/27, dated 04/08/2022 orders on which were passed by the Consumer Grievance Redressal Forum at Kasumpti on 14/11/2022 have also been requisitioned and gone through.

The documents placed on record besides the arguments advanced by both the parties have also been gone through.



Kasumpti
31/01/2023



HIMACHAL PRADESH ELECTRICITY OMBUDSMAN
SHARMA SADAN, BEHIND KEONTAL COMPLEX, SHIMLA-171002

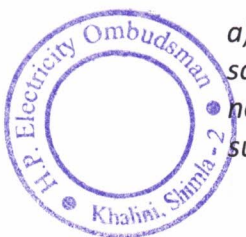
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3. The Complainant has a Connected Load of 1676 kW with initial Contract Demand as 550 kVA. The Complainant reduced his Contract Demand temporarily vide letter dated 23/06/2015 from 550 kVA to 425 kVA which also started reflecting in their energy bills issued in September 2015.
4. The Respondents issued a demand dated 28/05/2022 for Rs 8,78,000/- for less demand charges levied in view of amendment dated 31/07/2018 in Clause 3.10 of the Himachal Pradesh Electricity Supply Code 2009. They further revised the demand from Rs 8,78,000/- to Rs 8,08,836/- on 15/06/2022 which the Complainant paid under protest on 01/07/2022.
5. The contention of the Complainant is that the Forum below have not taken in to consideration of his pleadings and the pleadings on behalf of the Respondents were even given by the Ld Presiding Officer of the Forum and the Ld Advocate/ authorized officer for the Respondents didn't utter a single word and didn't argue in support of their case.
6. His further contention is that the Forum below should have evaluated the pleadings of both sides. Further, that the Forum below has committed grave miscarriage of legal procedure by standing in favour of the Respondents and denying his specific pleadings and not following the principles of law and equity.
7. His further contention is that despite instructions issued by the Chief Engineer (Commercial) on 25/10/2018, the department slept over for 29 months and kept raising the energy bills on reduced demand of 425 kVA. Further, had the Respondents executed the 2nd amendment w.e. from 01/04/2019, they would have acted to reduce their Contract Demand permanently or opted for any other probable remedy.
8. The Complainant contention is that the Forum below, without even considering his pleadings had applied the doctrine of "*Ignorantia juris non excusat*" i.e. ignorance of law is no excuse on them whereas the officials of the Respondents remained ignorant over the execution of law for 29 months and the Forum below failed to apply the same doctrine on the Respondents.
9. The amendment in Clause 3.10 of Himachal Pradesh Electricity Supply Code 2009 states:

"3.10 Temporary revision of contract demand.-

The consumers to whom two part tariff is applicable shall be entitled to revise their contract demand within the total sanctioned contract demand without surrendering their lien of the total sanctioned contract demand, subject to the following condition-

- a) *that the consumer shall not reduce the contract demand to lesser than 50% of the total sanctioned contract demand subject to a further condition that the contract demand shall not be reduced below the lowest limit of contract demand as per the tariff category (or any sub-category thereof) applicable to him:*



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Provided that the consumer shall not be eligible for temporary revision of Contract demand to a value other than the full sanctioned contract demand for a total period of more than six months in one financial year:

Provided further that in cases involving part period of a year e.g. if a consumer takes the connection, or the consumer gets his permanent sanctioned contract demand revised, during the middle of a year, the adjustments shall be made on pro-rata basis.

Note: *The Distribution Licensee shall, immediately after the publication of the Himachal Pradesh Electricity Supply Code (Second Amendment) Regulations, 2018, in the Rajpatra, Himachal Pradesh, issue suitable detailed procedural instructions within the framework of the above provisions to its field units for the smooth implementation of aforesaid provisions w.e.f 01.04.2019.*

(b) that the consumer shall not be entitled to revise the contract demand more than twice a year subject to the condition that the time gap between two successive revisions shall not be less than 3 months;

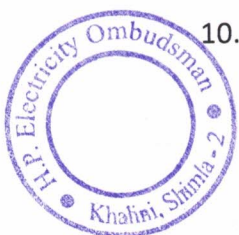
(c) that the consumer shall give a notice of at least one month to the licensee before revising the contract demand under this mechanism. Even though the consumer shall not be required to obtain any sanction from the licensee for change in contract demand under this mechanism, he, so as to avoid the disputes, shall ensure that the notice(s) for such revision are duly served by him upon the licensee through registered post or through courier service or is delivered by hand against signed receipt therefor;

(d) that in cases where the contract demand is reduced under this mechanism, such reduced contract demand shall be applicable for billing purposes; and

(e) that in cases where the consumer gets his contract demand reduced permanently, the limit under clause (a) shall be considered with respect to such reduced contract demand, but such reduction shall not be considered to have been made under this mechanism and the time gap of 3 months as per clause (b) shall be reckoned from the date from which the demand was last revised under this mechanism.

Illustration.- *If a consumer who is having sanctioned contract demand of 10 MVA temporarily revises the contract demand to 6 MVA w.e.f. 01.08.2014 under this mechanism but gets his sanctioned contract demand permanently reduced to 8 MVA w.e.f. 01.09.2014, he shall have to pay charges based on 6 MVA contract demand till 31.10.2014 (i.e. till the expiry of 3 months period from the date at which the contract demand was last revised i.e. from 01.08.2014). However, if the contract demand is to be reduced permanently to lesser than 6 MVA (say 4 MVA as on 01.09.2014), the demand charges would have been based on a contract demand of 4 MVA during the period upto 31.10.2014."*

10. The amendment was made effective w.e. from 01/04/2019 onwards and in the 'Note' after the 2nd proviso, directions were also inserted for the Distribution Licensee to issue suitable detailed procedural instructions within the framework of the above provisions to its field units for the smooth implementation of aforesaid provisions w.e.from 01.04.2019 onwards.



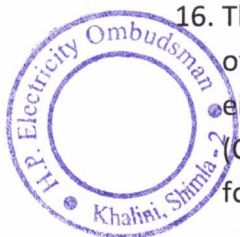
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The Chief Engineer (Commercial) for the Distribution Licensee issued detailed instructions dated 25/10/2018 for implementation of the 2nd amendment in the Himachal Pradesh Electricity Supply Code 2009.

11. The idea of making this amendment by the Commission in advance and giving ample time for its implementation by a later date was for smooth implementation of the temporary revisions of the Contract Demand cases after 01/04/2019 onwards. Further, the Commission in its vision had given ample time to the Distribution Licensee directly to issue instructions internally to their field officers and indirectly to inform the affected Consumers so that they could get enough time to make choice to either temporarily reduce their Contract Demand as permanent Contract Demand or to opt for any other remedy available.
12. Now there are two issues, first is the contention of the Complainant that the Forum below applied the doctrine of 'Ignorance of law is no excuse' on him but failed to apply the same to the Respondents. The second issue is of the wrong application of Tariff i.e. after the applicability of the 2nd amendment in the Himachal Pradesh Electricity Supply Code 2009, the Respondent Board was entitled to recover 100% of the sanctioned Contract Demand for atleast 6 month in a financial year.
13. Now the settled legal position is that the same doctrine of 'Ignorance of law is no excuse' also apply to both the Complainant and the Respondent Board equally and no one can escape that position. However, the officials of the Respondent Board failed to implement the provisions of the 2nd amendment for a very long period of almost three years and the Distribution Licensee should act against those erring officers who have deprived the legitimate revenue of the Respondent Board for a long time. Their conduct has also put additional financial burden on the Consumers since they could have opted to make their reduced Contract Demand as permanent after 01/04/2019.
14. Further, since the demand of wrong application of tariff i.e. less charging of Contract Demand was first made in May 2022, the provisions under Section 56 (2) of Electricity Act, 2003 does not apply and the demand is covered under the category of bona fide error on account of wrong application of Tariff by the Respondent Board.
15. The Hon'ble Supreme Court's judgment in CA No. 1672 of 2020 Assistant Engineer Ajmer Vidyut Vitran Ltd & Anr Vs Rahamathullah Khan Alias Rahamjulla is clearing applicable in this case. The 'First Due' in this case is May 2022, may be by the Respondent Board's own findings or pointed out by the Audit.
16. The temporary reduction made by the Complainant in 2015 much prior to the effectiveness of the 2nd amendment w.e. from 01/04/2019 is although not terminated automatically either by the 2nd amendment or by the instructions issued by the Chief Engineer (Commercial) but the Respondents are entitled to recovery of 100% of Contract Demand for atleast 6 months in a financial year as per 2nd amendment.



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17. The Consumers are also entitled to retain reduced Contract Demand up to a level of 50% of sanctioned Contract Demand for atleast 6 months in a financial year and accordingly, the Respondents are entitled to recover 100% of the sanctioned Contract Demand after 01/10/2019 onwards till 31/03/2020. But the Contract Demand can't automatically reduce to earlier reduced level of Contract Demand as on 01/04/2020 onwards until and unless the Consumer opts again for reduction of his Contract Demand temporarily.
18. Now let us examine the Orders passed by the Forum below. The Consumer Grievance Redressal Forum at Kasumpti vide orders dated 14/11/2022 in Complaint No. 1411/3/22/27, dated 04/08/2022 has relied on the provisions of 2nd amendment in Himachal Pradesh Electricity Supply Code 2009. They have tried to explain that it is on the Consumer who should have been aware of change in law and apply fresh for re-revision of his temporary Contract Demand in any financial year and the Contract Demand shall automatically reset to sanctioned Contract Demand on 1st of April of subsequent financial year.
19. Their conclusion of their order is that the temporary Contract Demand existing before 01/04/2019 shall revert back to permanent sanctioned Contract Demand unless and until the Consumer applied afresh for temporary reduction of his Contract Demand. Further, the temporary reductions in Contract Demand to 425 kVA in 2015 shall automatically revert back to sanctioned Contract Demand of 550 kVA on 01/04/2019.
20. The Complainant, after receiving the demand for less charge, applied for permanent reduction of Contract Demand to 425 kVA on 20/07/2022. The Forum below also mentioned that although the instructions were imparted on 25/10/2018 to field units for implementation of 2nd amendment w.e. from 01/04/2019 onwards but the same is of no help to the Complainant since his temporary reduction in Contract Demand in 2015 is deemed to have expired or cease to exist on 01/04/2019.
21. At this point, in my considered view, I differ from the stand taken by the Forum below that as on 01/04/2019, the Contract Demand shall automatically revert back to full sanctioned Contract Demand. My considered view is that the Contract Demand shall automatically revert back to 100% only after 01/10/2019 onwards since the earlier temporarily reduced Contract Demand will remain applicable for first six months of the financial year starting 01/04/2019 onwards as the Consumer is also entitled to retain reduced Contract Demand up to a level of 50% atleast for six months in a financial year.
22. Further, the 2nd amendment in Himachal Pradesh Electricity Supply Code 2009 was made through valid process after publication of draft and inviting objections from all stakeholders and published on 7th August in the official gazette and further supported by the instructions dated 25/10/2018 as directed by the Commission.

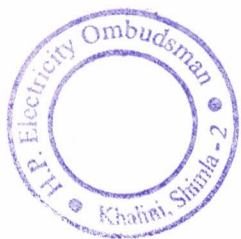


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23. Initially the Respondents raised the demand for Rs 8,78,000/- corrected to Rs 8,08,836/- considering that on 01/04/2019 the Contract Demand is 425 kVA (temporarily reduced in 2015) and then applied full sanctioned Contract Demand of 550 kVA w.e. from 01/10/2019 till 31/03/2020 and against on 425 kVA w.e. from 01/04/2020 till 30/09/2020 and then again on 550 kVA w.e. from 01/10/2020 till 31/03/2021 and similarly for subsequent years till the demand was permanently reduced to 425 kVA on 20/07/2020.
24. But the Respondents, after orders passed by the Forum, issued another demand for additional less charges amounting to Rs 2,53,125/- by considering demand at 550 kVA w.e. from 01/04/2019 onwards till the Complainant reduced their demand permanently to 425 kVA on 20/07/2022.
25. The orders passed by the Consumer Grievance Redressal Forum at Kasumpti on 14/11/2022 in Complaint No. 1411/3/22/27, dated 04/08/2022 are not fully in line with provisions of law and I differ from their opinion of resetting of Contract Demand to full sanctioned Contract Demand from 01/04/2019 onwards since the Consumer is also entitled to retain reduced Contract Demand up to a level of 50% for atleast 6 months in a financial year.
26. Further, the allegations made by the Counsel of the Complainant that during hearings, the Ld Presiding Officer of the Forum argued on behalf of the Respondents despite no arguments were put forth by the Counsel/ representative for the Respondents is very serious in nature and not fair in the eyes of law. This will shackle the confidence of the litigants towards the adjudication process, judiciary, the judicial process, and the rule of law, which cannot be allowed.
27. The demands raised by the Respondents on 28/05/2022 for Rs 8,78,000/- corrected to Rs 8,08,836/- on 13/06/2022 and further raised after issuance of orders passed by the Forum below on 23/12/2022 for Rs 2,53,125/- are required to be reworked keeping in view that the Contract Demand shall revert back to full sanctioned Contract Demand only after 01/10/2019 onwards.
28. It was the prime duty of the Respondents to implement the provisions of the 2nd amendment of Himachal Pradesh Electricity Supply Code 2009 either by intimating the Consumers well in time or by issuing revised energy bills after 01/04/2019 onwards so that the Consumers could have opted wisely either to revised their permanent Contract Demand or by any other probable remedy. But they have miserably failed to do so.
29. Further, their casual attitude/negligence of not informing the affected Consumers on time of change in law or not executing the 2nd amendment of Himachal Pradesh Electricity Supply Code 2009 is a matter of grave concern on part of the field officers of the Distribution Licensee since this has not only affected their monthly revenue but will also put additional financial burden on the Consumers as well and also spread mistrust between Consumers and the Distribution Licensee.



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31/01/2023



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G – Issues at hand:

1. **Issue No. 1:** Whether the temporarily reduced Contract Demand of the Complainant shall automatically reset at full sanctioned Contract Demand as on 01/04/2019 onwards due to provisions under 2nd amendment of Himachal Pradesh Electricity Supply Code 2009 or not?
2. **Issue No. 2:** Whether the demand raised by the Respondents on 28/05/2022 for Rs 8,78,000/- corrected to Rs 8,08,836/- on 13/06/2022 and further demand raised after issuance of orders passed by the Forum below on 23/12/2022 for Rs 2,53,125/- are in line with those provisions of 2nd amendment of Himachal Pradesh Electricity Supply Code 2009?
3. **Issue No. 2:** Whether the orders passed by the Consumer Grievance Redressal Forum at Kasumpti on 14/11/2022 in Complaint No. 1411/3/22/27, dated 04/08/2022 is in line with the existing provisions of Law?

H – Findings on the issues:

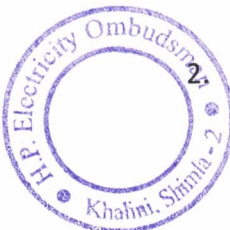
Issue No. 1:

1. As is evident from the discussions above and the facts and record available and in my considered opinion, the Respondent Board is entitled to recover full sanctioned Contract Demand in line with provisions of Clause 3.10 of Himachal Pradesh Electricity Supply Code 2009 through 2nd amendment only for a period of 6 months in a financial year.
2. However, the same shall be applicable w.e. from 01/10/2019 onwards since the Complainant is also entitled to avail reduced Contract Demand for a period of atleast 6 months in a financial year for which they had already applied in the year 2015.
3. However, the same doctrine shall not be applicable for next financial year starting from 01/04/2020 onwards and they should have been aware of change in law and opted for reduction of their Contract Demand either to a level up to 50% of the Contract Demand or for treating the already reduced Contract Demand as permanently reduced Contract Demand at any stage.

Issue No. 2:

1. As is evident from the analysis done above and the facts/ circumstances on record, the demands raised by the Respondents on 28/05/2022 for Rs 8,78,000/- corrected to Rs 8,08,836/- on 13/06/2022 and further after issuance of orders passed by the Forum below on 23/12/2022 for Rs 2,53,125/- are required to be reworked.

The Respondents are entitled to recover 100% of Contract Demand of 550 kVA w.e. from 01/10/2019 onwards for a period of 6 months in a financial year but the same shall not automatically reduce to 425 kVA on 01/04/2020 onwards to level prior to 01/04/2019 and



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the Complainant should have opted for reduction in Contract Demand as per applicable provisions of 2nd amendment of Himachal Pradesh Electricity Supply Code 2009.

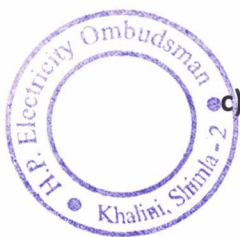
3. The casual and negligent attitude of the Respondents in implementing the Himachal Pradesh Electricity Regulatory Commission regulations in time bound manner have resulted in revenue loss to the Respondent Board by delayed recovery. Further, their casual attitude/negligence of not informing the affected Consumers on time of change in law is a matter of grave concern since this has not only affected their monthly revenue but will also have put additional financial burden on the Consumers and also spread mistrust between Consumers and the Distribution Licensee.

Issue No. 3:

1. As is evident from the analysis done above and the facts/ documents on record, the orders passed by the Consumer Grievance Redressal Forum at Kasumpti on 14/11/2022 in Complaint No. 1411/3/22/27, dated 04/08/2022 are not exactly in line with the existing provisions of Law.
2. In my considered opinion, the Complainant is also entitled to retain reduced Contract Demand up to a level of 50% of sanctioned Contract Demand for atleast six months in a financial year starting 01/04/2019 onwards.

I - Order:

1. The orders passed by the Consumer Grievance Redressal Forum at Kasumpti on 14/11/2022 in Complaint No. 1411/3/22/27, dated 04/08/2022 are upheld subject to the extent of following modification.
 - a) The Respondent Board is entitled to recover full sanctioned Contract Demand of 550 kVA w.e. from 01/10/2019 onwards only instead of 01/04/2019 since as per 2nd amendment the Consumer is also entitled to retain reduced Contract Demand up to a level of 50% of sanctioned Contract Demand for 6 months in a financial year.
 - b) The Respondents are directed to overhaul the account of the Complainant after treating the Contract Demand of the Complainant as 425 kVA w.e. from 01/04/2019 onwards till 30/09/2019 and thereafter on 550 kVA w.e. from 01/10/2019 onwards till the Complainant reduced his Contract Demand to 425 kVA on 20/07/2020 within a period of 30 days from the date of issue of these orders or latest by 02/03/2023 positively.
- c) The Respondents are directed to rework the demands raised on 28/05/2022 for Rs 8,78,000/- corrected to Rs 8,08,836/- on 13/06/2022 and further after issuance



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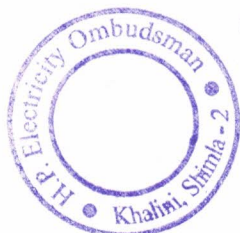


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of orders passed by the Forum below on 23/12/2022 for Rs 2,53,125/- as directed above.

- d) Further, The Respondents are directed to refund the excess amount, if any, through adjustment in the next energy bill to be issued in one go failing which the provisions of Clause 5.7.3 of shall be applicable and the Complainant shall be entitled to a simple interest of 15% per annum after 02/03/2023 on the said amount.
 - e) In case, some additional amount is due towards the Respondent Board, then the Respondents shall act to recover the same in line with applicable provisions of the Regulations/ Codes by giving separate notice of 15 days after adjusting the amount already paid and if left unpaid, include the same in the future energy bills of the Complainant.
2. The Respondents are further directed to report Compliance of above directions within a period of 30 days of issuance of the orders or but not later than 02/03/2023 positively failing which the matter shall be reported to the Hon'ble Commission for violations of the directions under 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 Act.
 3. The Respondent Board is also directed to take suitable action against the erring officers who have failed to timely implement the provisions under 2nd amendment of Himachal Pradesh Electricity Supply Code 2009 which have resulted in delayed recovery of amount due by almost three years.
 4. The Consumer Grievance Redressal Forum at Kasumpti is advised against putting forth their own arguments in support of the Respondents during hearing since this act on their part will shackle the confidence of the litigants towards the adjudication process, judiciary, the judicial process, and the rule of law, which cannot be allowed.
 5. The Complaint filed by M/S Mohan Meakins, Solan Brewery, Solan, District Solan, HP-173220 is hereby disposed off.
 6. No cost to litigation.

Given under my hand and seal of this office.



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Electricity Ombudsman 31/01/2023