



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

In the matter of:

Complaint No. 28/2022

M/S Milestone Gears (P) Ltd, Plot No. 58, Sector-1, Industrial Area, Parwanoo, Distt Solan, HP-173220
- Complainant

Vs

1. Executive Director (Personal), HPSEB Ltd, Vidyut Bhawan, Shimla-171004
 2. The Assistant Executive Engineer (E), Electrical Sub-Division, HPSEBL, Parwanoo, District Solan, HP-173220
 3. The Sr Executive Engineer, Electrical Division, HPSEB Ltd, Parwanoo, District Solan, HP-173220
- Respondents

Complaint No. 28/2022 (Received on 29/12/2022 and registered on 31/12/2023)
(Orders reserved on 13/04/2023 and issued on 27/04/2023)

Counsel for:

The Complainant: Sh. Rakesh Bansal, Authorized representative

The Respondents: Sh. Anil K God Advocate, Sh. Kamlesh Saklani Law Officer

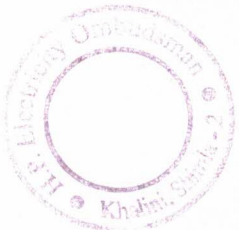
CORAM

Er. K. L. Gupta
HP Electricity Ombudsman

Order

The case was received on 29/12/2022 and registered on 31/12/2022. The case was first listed for hearing on 28/01/2023, the Respondents were to file their reply on or before 23/01/2023 and the Complainant was to file his rejoinder by 27/01/2023. The Respondents failed to submit their reply by 23/01/2023 and the case was further listed for 25/02/2023. The Respondents were to file their reply by 10/02/2023 and the Complainant was to file his rejoinder by 17/02/2023.

The Respondents filed their reply on 20/02/2023 and the Complainant was to file his rejoinder by 17/03/2023 and the case was listed for 25/03/2023. The Complainant filed his rejoinder on 16/03/2023 and the case was further listed for arguments on 13/04/2023. Arguments were concluded on 13/04/2023 and the orders were reserved. Hence the delay.



Er. K. L. Gupta
27/4/2023



A – Brief facts of the case:

1. M/S Milestone Gears (P) Ltd, Plot No. 58, Sector-1, Industrial Area, Parwanoo, Distt Solan, HP-173220 filed application through Sh. Aman Tandon (hereinafter referred to as 'The Complainant') under the provisions of Regulation 28 of Himachal Pradesh Electricity Regulatory Commission (Consumer Grievances Redressal Forum and Ombudsman) Regulations, 2013. They had not specified any sub-regulations however since they prayed for setting aside the orders passed by the Consumer Grievance Redressal Forum at Kasumpti on 20/12/2022 in Complaint No. 1421/3/22/29, dated 06/09/2022, sub-regulation 1 (b) is applicable in this particular case.

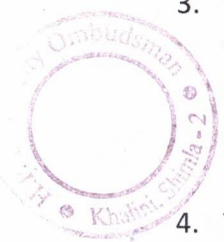
B – The Complainant's submissions:

PROLOGUE/ BACKGROUND:

1. The Complainant submits that he is filing the said Complaint through Sh. Aman Tandon, Director of the firm, who has been authorized vide resolution to sign, institute, verify swear affidavits, suits, Complaints, appeal and other proceedings to protect his interest and to engage counsel(s)/Advocate (s)/ representatives (s). Further, that he is filing the said Complaint under Regulation No. 28 of the HPERC (Consumer Grievances Redressal Forum and Ombudsman) Regulation 2013. Further, that his Company is a Consumer under the Electricity Act, 2003 i.e. Section 2 sub-Section 15 and the Respondents are Distribution Licensee under Section 2 sub-section 17 of the Electricity Act, 2003. His Company is also a Consumer under Section 3 (d) of the HPERC (Consumer Grievances Redressal Forum and Ombudsman) Regulation 2013. The Respondents/non-applicants have failed to adhere to the provisions of the Supply Code, 2009 notified by the Himachal Pradesh Electricity Regulatory Commission under the Electricity Act, 2003 and has wrongly claimed the arrears towards demand charges. Further, that he approached the Consumer Grievances Redressal Forum of HPSEBL, for redressal of his grievance, who, in the end of the proceeding rejected the Complaint holding it being devoid of merits and substance.

Facts of the Case

2. The Complainant submits that he had an industrial power connection of 770 kW of Connected Load with 470 kVA of Contract Demand.
3. The Complainant submits that he applied for temporary reduction of Contract Demand from 470 kVA to 250 kVA in the year 2016 which was processed and effected by the Respondents during April, 2016. After the revision, the billing was carried out with a billing demand of 250 kVA and demand charges were levied on the basis of 250 kVA.
4. The Complainant submits that on 23/09/2021, the Respondents issued a demand notice demanding a sum of Rs. 11,88,000/- towards less charged demand charges. He objected to



Kasumpti
27/11/2023



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

the demand notice vide his letters dated 07/10/2021, 16/02/2022 and 16/03/2022. The objections were not considered by the Respondents and arrears of Rs. 11,88,000/- were added in the electricity bill issued on 05/02/2022. The Complainant further submits that he deposited a part amount of Rs. 6,02,910/- under protest vide his letter dated 16/03/2022. The impugned demand notice dated 23/09/2021 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 10/2019 to 09/2021, i.e. a period of 24 months.

5. The Complainant submits that he deposited under protest the part amount of arrears demanded vide demand notice and a sum of Rs. 6,02,910/- was deposited by him under the cover of his letter dated 16/03/2022, vide Cheque No. 887702 dated 16/03/2022 drawn on State Bank of India.
6. Further, that the Forum disposed the grievance vide orders dated 20/12/2022 rejecting the Complaint without giving any relief to him.

Contentions of the Complainant:

Automatic Resetting of contract demand:

7. The Complainant submits that the Ld. Forum in Para 20, has wrongly interpreted the meaning of the amended para 3.10 after the 2nd Amendment. The Forum in this para has stated that:

"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 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;"

8. The Complainant submits that the Forum has exceeded its jurisdiction with regard to interpreting a legislation, whereas such powers are only vested with courts. The mechanism of resetting the Contract Demand automatically in each financial year has nowhere been mentioned even in the amended clause 3.10. The provision that has been added vide second amendment states as follows:



Leptu
27/4/2023



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

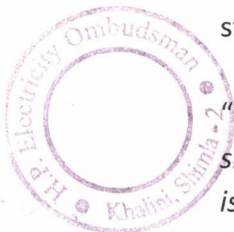
"Provided that the Consumer shall not be eligible for temporary revision of contract demand to a value other than the full sanctioned contract demand for a total period of more than six months in one financial year:

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."*

9. Further, that the proviso clearly talks of eligibility of the Consumer being six months in a year, but does not talk of the procedure of resetting etc. The idea resetting of the Contract Demand is the outcome of the Forum themselves.
10. The Complainant submits that it is also proven by the demand notice dated 23/09/2021, wherein the Respondents had given relief of six months in a year, while calculating the arrears. The subject matter of the said demand notice is *"Switching of contract demand to original sanctioned contract demand"*. The methodology adopted by the Respondent is different and it did not demand any arrears for the periods April to Sep, in the year 2019 and 2020. The temporary reduced Contract Demand was automatically carried on for next year also and it did not require the Consumer to file a fresh revision for the temporary reduction.
11. Further, that the internal instructions issued by the Chief Engineer (Comm.) on 25/10/2018 after the notification of the 2nd amendment also does not talk of resetting and re-application for reduction of Contract Demand. Para 3 (c) of the said instruction states as follows:
- "3(c) In this case Consumer shall have the option to continue with revised CD for a maximum period of 3 months i.e. 4th, 5th and 6th month. As per revised clause 3.10(a), if a Consumer does not revise CD then after 6th month **the billing shall be done on the basis of Original Sanctioned Contract Demand only.**"*
12. The instruction merely talks of billing but not about revision of Contract Demand, which stays untouched. In para 21 also the Forum has wrongly drawn the conclusion that:

"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."



Handwritten signature and date: 27/11/2023



Retrospective Application of the amendment:

13. The Forum's view on retrospectivity of the whole issue is summed up below:

In Para 22 of the order:

"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."

14. The Complainant submits that the Forum is viewing the retrospectivity only with respect to the period of billing and the period of arrears demanded, but not with respect of the application for temporary reduction which was filed in the year 2016, years before the 2nd Amendment. The issue of retrospectivity w.r.t. the applications which already existed before the amended provisions came into force viz a viz , the applications for temporary reduction which are filed after the amendment in the rules was raised by him, which the CGRF did not address, but have derived a different meaning of retrospectivity in the matter. Further, that he submitted before the Forum that his application of 2015 was governed by the previous rules applicable at the time of filing of the application, but not by the fresh rules made applicable in 2019.

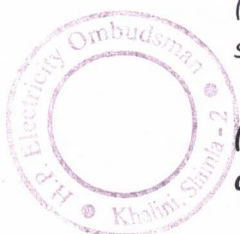
15. The Himachal Pradesh General Clauses Act, 1968 in its section 4 states that

" 4. Effect of repeal.- Where this Act or any Himachal Pradesh Act repeals any enactment then, unless a different intention appears, the repeal shall not-

(a) revive anything not in force or existing at the time at which the repeal takes effect; or

(b) affect the previous operation of any enactment so repealed or anything duly done or suffered thereunder; or

(c) affect any right, privilege, obligation or liability acquired, accrued or incurred under any enactment so repealed; or



*Accepted
27/4/2019*



(d) affect any penalty, forfeiture or punishment incurred in respect of any offence committed against any enactment so repealed; or

(e) affect any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment as aforesaid;

and any such investigation, legal proceeding or remedy may be instituted, continued or enforced, and any such penalty, forfeiture or punishment may be imposed as if the repealing Act had not been passed."

16. Similar provisions are also available in the General Clauses Act, 1977 which is a central Act in Section 6(c). These sections of the said Act protect his rights as the 2nd amendment cannot affect the right that was available to him before the new enactment.

Delayed action on the part of the Respondents:

17. The Ld. Forum in para no. 29 of the order has observed that:

"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 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 to 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;

18. The Forum has erred in observing that he has failed to keep vigil on the change in law, while the real position is vice versa, which the Ld CGRF has not put on record. The 2nd Amendment was notified in July 2018, and the provision in question was applicable w.e.f. 01/04/2019, while the internal instructions were issued by CE (Comm,) on 25/10/2018. The question arises as to:



Accepted
27/4/2023



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

- a) What stopped the Respondent field office to issue correct bills to the Complainant immediately after 01.04.2019, within the meaning which they understood of the amendment, be it their version?
- b) Why did the field offices sleep until 08.03.2021, the date of the demand notice and the subsequent demand notices that were issued thereafter, which are contrary to their earlier notices?
- c) Were the Respondents not responsible to maintain vigil of the changing law, as they are day in and day out only dealing with the matters related to the subject of electricity?
19. The Complainant submits that the Ld. Forum has erred in observing that he was not vigilant, whereas he was of the clear view that the amended provisions were not applicable on him as has been explained in foregoing paras.

Notice of change:

20. The Complainant submits that even if the Respondents' intentions based on their interpretation of the 2nd amendment are to be believed, it would have been fair and in the interest of justice that the intentions should have been conveyed to the such affected Consumers, including him about the fate of facility that they were availing before such amendment, which would have provided an opportunity to him to set his house in order in view of the interpretation of the 2nd amendment. The Hon'ble Commission had provided reasonable period of eight months for smooth implementation of the changed provision. The foot note under the new provision is reproduced below:

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."*

21. Further, that the approach of the Respondents is highly unfair and contrary to the principles of natural justice. Neither have they implemented the amended provisions well in time, nor had they given any notice of fate of the temporary reductions already in operation since before the amendment period.

The 2nd amendment does not terminate the already existing applications for temporary reduction:

22. The Complainant submits that nowhere in the second amendment, it is mentioned or indicated otherwise that the existing temporary reduction shall automatically stand terminated. Nor does the instructions issued by CE (Comm.) anywhere mentions the lapse



Accepted
27/11/2023



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

of existing reduction cases approved before the amendment came into effect. The Respondents are extrapolating the amendment in order to earn extra revenue as has been observed by internal audit of their accounts. The amendment only targeted the prospective applications for temporary reduction.

The delayed action on the part of the Respondents has cast additional liability on the Complainant:

23. Further, that even if the entire version of the interpretation of the Respondents is considered lawful, the delay has cast additional liability on him. Had the first bill after 01/04/2019 issued as per their interpretation, he would have taken adequate action w.r.t. fresh filing of application, modification of demand etc. in order to contain the additional liability to whatever extent possible. The permanent reduction which he carried out after the issuance of demand notices could have been carried out much earlier, immediately after 01/04/2019. The Complainants further submits that such application on this date will not be entertained retrospectively. Lackadaisical approach of the employees of a public utility should not be permitted at the cost of the Consumers.
24. **Prayer:** In view of above the Complainant prays **a)** to quash and set aside the orders dated 20/12/2022 passed in Complaints No. 1421/3/22/29 as the same are contrary to the provisions of the HPERC (Consumers Grievances Redressal Forum and Ombudsman) Regulations, 2013; **b)** to quash the demand notice 23/09/2021 issued by the Respondents; **c)** to direct the Respondents to roll back the late payment surcharge applied in the bills on account of the arrears of impugned demand notice dated 23.09.2021; **d)** to direct the Respondents to treat the earlier temporary revised Contract Demand till the next application for revision of Contract Demand and do not allow automatic switching; **e)** to pass orders against the Respondents for their conduct in respect of delayed action in implementing the provisions of the 2nd amendment; **f)** to pass orders directing the Respondents to pay interest on amount refundable to the Complainant on the amount already recovered till the date of actual refund as per clause 5.7.3 of the Supply Code, 2009, on the increasing/ reducing balance; **g)** to direct the Respondents to compensate the Complainant towards cost of the Complaint amounting to Rs. 1,00,000/-; **h)** to Call for the record of the case and, **i)** any other or further orders which this Hon'ble Forum may deem fit and proper, in the facts and circumstances of the case may kindly be passed in favour of the Complainant company and against the Respondents/distribution licensees.

C – The Respondents' submissions:

1. 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 H.P. and a regulated entity under HPERC constituted 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



Receipt
27/4/2023



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

its letter and spirit. Under section 50 of the Electricity Act, 2003 it is provided therein that State Commission shall specify of electricity charges, interval for billing of electricity charges, disconnection of supply of electricity for non-payment thereof, restoration of supply Code, 2009 was made complying with the provisions of the Electricity Rules, 2005. Further, that the HPERC 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:

- a) *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 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 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 regulation to amend the HP Electricity Supply Code, 2009 in the Rajpatra H.P. dated 02/02/2018, as required under sub-section (3) of section 181 of the Electricity Act, 2003, Rules 3 of the Electricity Rules, 2005 and notice for inviting suggestion 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 Electricity 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 Regulation On 31/07/2018. Hence, the required procedure had been adopted by the Commission while notifying the amendment which



*Accepted
27/11/2013*



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

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 the issues as to whether the regulations framed by the Electricity Regulatory Commission override the existing contracts or not is not reintegrate as the Constitution Bench of the Hon'ble Apex Court in the case titled as PTC India LTD Versus Central Electricity Regulatory Commission (2010) 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 Regulations, 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 the Complainant cannot evade from making payment of the charges on this account as such the representation filed by the Complainant is liable to be dismissed. Further, that the Id Forum has passed very reasoned and speaking order in accordance with the mandate of the regulations occupying the field, no further interference is warranted in the matter.
4. The Respondents submit that the Id Forum has passed well reasoned and speaking order dated 20/12/2022, wherein the regulatory provisions occupying the field 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 Complaint wherein, the action of the Respondent/ HPSEBI 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:-

5. The Respondents specifically denied that the Respondents have failed to adhere to the provisions of the Supply Code, 2009 notified by the HPERC under the Electricity Act, 2003. Further, that the Id Forum has rightly dismissed the Complaint filed by the Complainant since there were no such grounds to make out any case. The instant representation as filed by the Complainant is also devoid of any merits and the order dated 20/12/2022 passed by the id Forum being reasoned and speaking in accordance with the provisions of the regulations, no such interference is called in this matter.
6. 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 since the Id Forum has passed very reason and speaking order dated 20/12/2022, there is no scope for further scrutiny of this Id Ombudsman. Detailed reply has already been furnished by the Respondents before the Id forum, same may be read as part and parcel in reply to this representation.



Accepted
27/11/2023



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

7. The Respondents submit that detailed reply has already been furnished by them to the Complaint filed by the Complainant in the Id forum, for the sake of brevity, the contents of same may be read as part and parcel in reply to this representation. Further, that the impugned demand notice dated 23/09/2021 issued by them is strictly in terms with the clause No. 3.10 of the HP Electricity Supply Code, 2009 (Second Amendment) regulations, 2018, which has been brought into force w.e.f 01/04/2019, and the Id Forum has rightly disposed of the Complaint filed by the Complainant vide impugned order dated 20/12/2022, the interference of this Id Ombudsman is not warranted in this matter.
8. The Respondents specifically denied that the Id Forum while passing the impugned order dated 17/10/2022 has wrongly interpreted the clause 3.10 of the HP Electricity Supply Code, 2009. They further submit that the Id forum has rightly appreciated the true intent and purpose of the amended provisions of clause 3.10 of the Supply Code and has passed the impugned order. They specifically denied that the Id Forum has exceeded its jurisdiction with regard to interpreting the legislation. Further, that the clause 3.10 of the Electricity Supply Code, 2009 is very much clear which provides the specific intention of the legislature qua the eligibility of the benefits of the revised contract demand. Terms "one financial year" is mentioned in the clause which leaves no manner of doubt for further interpretation of the language of the clause. Further, that the Complainant is trying to make out his case purely on the basis of the assumption and presumptions which is not allowed. The internal communication which has been issued by the Respondents is totally mis-interpreted by the Complainant. Further, that the language of the clause 3.10 of the Supply Code, 2009 is very much clear as such, Id forum has rightly dismissed the Complaint filed by the Complainant.
9. The Respondents submit that the Id Forum has rightly appreciated the contention of the parties and rendered its detailed findings on the each and every issue which was brought before it. The Complainant has mis-read and misinterpreted the statement, object and reasons of the 2nd Amendment, 2018 to the HP Electricity Supply Code, 2009. Further that it is settled position of the law that the existing contracts have to be align with the provisions of the Regulations. This Id Ombudsman has already disposed of matters with identical issues, where the action of the Respondents has been declared just and legal. The Complainant is arguing in air regarding application of the General Clause Act.
10. The Respondents submit that when 2nd Amendment, 2018 was brought by the Hon'ble HPERC, detailed draft was uploaded in the website of the Hon'ble Commission and comments/ objections were sought from the stakeholders on the proposed amendment. The Hon'ble Commission has followed the proper procedure as required under law and further having public hearing on the matter, the clause 3.10 of the Electricity Supply Code, 2009 was amended. Further, the same amendment was published in the official gazette of HP for its vide publication. Further, that the impugned



Accepted
27/11/2023



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

order dated 20/12/2022, passed by the Id Forum in Complaint No. 1421/3/22/029, dealt each and every aspect of the matter and there is no further scope for kind of interference by this Id Ombudsman.

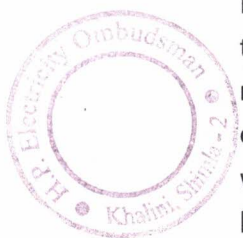
11. The Respondents thus prayed that the representation filed by the Complainant being meritless, may kindly be dismissed.

D – The Complainant’s additional submissions through rejoinder:

1. The Complainant submits that he at the outset repeats, reiterates and confirm all the statements and averments made by him in the Complaint and deny all the statements and averments made in the said reply unless and until the same are specifically admitted by him. The objections raised by the Respondents are lacking merit.
2. The Complainant submits that keeping in view the Complaint filed by him and the reply filed thereafter by the Respondents, no matter of the Complaint stands resolved. The Respondents have missed or have denied the main issues raised by him, which still need redressal by this Hon’ble Forum. The pointwise rejoinder to the reply and objections raised by the Respondents is as below:

Reply to preliminary submissions:

3. The Complainant submits that the question of whether the Commission followed the required procedure under the law is not at all the matter of this grievance. He has not challenged the manner in which the amendment was carried out and is fully conversant with the legal procedure. That it is only the manner in which the said amendment was implemented by the Respondents, which is a matter under this grievance.
4. The Complainant submits that it is also agreed that the existing contracts have to be aligned with the provisions of the regulations. But it is the methodology adopted by the Respondents to align the existing contracts with the provisions of the regulations which he is questioning. The Respondents simply raised demand for arrears after a period of two years rather than issuing the regular monthly bills as per provisions of the regulations immediately after the date of amendment in the regulations. Nor did the Respondents consider their responsibility to issue a notice in a timely manner to him, so that he could take any action to prevent excess liability being cast by the new/ amended provisions. Further, that it is the sudden realization on the part of the Respondents after the lapse of two years that the amended provisions could realize more revenue if applied retrospectively from the date of the demand notice. The amendment which came into force on 31/07/2018, with the date of applicability of the relevant provision w.e.f. 01/04/2019, was affected by the Respondents on 09/05/2022 (*Date appears to be incorrect*), after a lapse of almost three years. The Complainant is suffering on account of late action and implementation of the same amendment in regulation, which the Respondents have stated



Accepted
27/11/2023



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

to be binding on them, while they have also quoted themselves as law abiding entity. The Respondents have themselves contravened the amended regulations and instead of making it effective immediately on 01/04/2019, failing to do so, have put him into a position where he is being made to suffer additional financial burden due to delay in action of the Respondents.

Contentions of the Complainant

5. The Complainant submits that there is no logic in the denial of the Respondent on the understanding of the term 'one financial year', which clearly goes by its literal meaning that a financial year begins from 1st of April every year and ends on 31st March the next calendar year. The restriction imposed by the amendment for a period of six months in a financial year does not necessarily means that it has to be the first six months of a financial year. If a Consumer reduced his Contract Demand on 1st of October 2019 and continues on the reduced Contract Demand upto 30/09/2020, he still would have availed the benefit of six months in a financial year for two consecutive financial years 2019-20 and 2020-21. Such a case also clearly meets the requirement of amended clause 3.10. Whereas the automatic switching over of Contract Demand on 1st of April every year will require two revisions over the two years. The CGRF in its interpretation has further curtailed the flexibility given to the Consumer by the regulations. The Complainant further contested that the once temporarily reduced demand shall continue to remain in force, however, only the billing for six months in a year shall be carried out on the basis of the sanctioned Contract Demand, without even necessitating the temporary reduction of Contract Demand every year. That the interpretation of the CGRF is not correct and such interpretation cannot be allowed to unilaterally change the objective of the amendment.
6. The Complainant submits that that the CGRF has only considered the meaning of retrospectivity with respect to the date of amendment, while he has all the time been referring the retrospectivity with reference to the date of his application for the reduction of Contract Demand. The revisions/ reductions carried out prior to the effective date of the new amended clause 3.10, i.e. 01/04/2019, remain untouched by the new amendment as the such revisions were carried out under the applicable erstwhile provisions prior to the amendment coming in force. For instance, in the present case, he had temporarily reduced the Contract Demand in the year 2016, when there was not such restriction on the benefit of such reduction for six months in a financial year. Such cases cannot be covered under the new amendment unless and until the Complainant approaches the Respondents for a subsequent revision after the onset of the new rules. It would be well within the rights of the Respondents to allow such reduction only for a maximum period of six months in a year, if the Consumer approached them after 01/04/2019. Hence, the amendment is not being questioned in the present representation.
7. The Complainant thus prayed that in view of above, the Complaint deserves to be allowed by the Hon'ble Ombudsman. He prayed to grant relief as prayed in the Complaint.



Handwritten signature and date: 27/11/2023



E – Written arguments by the Complainant:

Brief Synopsis

1. The Complainant temporarily reduced his Contract Demand w.e.f. from 2016 from 470 kVA to 250 kVA.
2. On 23/09/2021 the Respondents issued a demand notice for Rs. 11,88,000 towards differential demand charges for the period of October, 19 to Sept, 2021.
3. The Complainant permanently reduced his Contract Demand from 470 kVA to 250 kVA following the demand notice on 23/09/2021, which was processed with prospective effect.
4. The Complainant approached CGRF vide Complaint no. 1421/3/22/29, who disposed the same vide its final orders dated 20/12/2022 denying any relief to him.
5. The Complainant approached the Hon'ble Ombudsman for further redressal of his grievance.

Arguments:

6. Provision of 2nd amendment inserted in Clause 3.10 of the Supply Code.

The provision reads 'the Consumer shall not be eligible for temporary revision of contract demand for a period of more than six months in a financial year:

The said provision only restricts the Consumer from the benefit of the temporary reduction to a maximum period of six months.

-The said inserted provision does not talk of the procedure to be followed, whether a Consumer is required to re-apply for temporary reduction every year or whether the reduction will expire in six months. It neither talks of the which period of the year these six months of benefit can be.

7. The CGRF has interpreted that for billing purposes the contract demand automatically switch over to the sanctioned contract demand w.e.f. date of applicability of the 2nd amendment which is 01.04.2019.

The Hon'ble Ombudsman in the case of M/s Mohan Meakin Ltd versus HPSEBL has interpreted the same in a third manner upholding that the previous continuing temporary reduction will automatically expire on 30/09/2019 and thereafter fresh applications would be required each year. The Respondents demand notice is also based on similar interpretation.

Accepted
27/11/2023



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

While the Complainant's interpretation is that the new provision will not apply on the temporary reductions which were already continuing on 01/04/2019. Any Consumer who would approach for temporary reduction after 01/04/2019 shall be bound by the new provisions.

8. The temporary reduction of Contract Demand which was governed by the rules prevailing in 2015 cannot be terminated by an amendment which specifically does not contain such provision. The Complainant's temporary reduction shall continue to be governed by the old provisions under which such sanction/ approval was granted until and unless such reduction is changed / withdrawn by the Complainant on his own. In the absence of such clarity in the amendment, the provisions of section 4 of the H.P. General Clauses Act, 1968 and the provisions of corresponding section 6(c) of the General Clauses Act, 1977 of the Union of India, would automatically apply. **When there is a disagreement between pre-constitutional laws and post-constitutional laws or when there is a lack of clarity in the specific enactments, the General Clauses Act is highly useful. To minimize confusion, the Act provides a clear suggestion for contradictory sections and separates the law according to when it will take effect and how it will be applied.**

This amendment since it is creating confusion, will attract the provisions of the General Clauses Act, to protect the Consumers. It is further stated that the Electricity Act, 2003 is a Consumer centric Act, with one of its objective as Consumer protection and hence the Consumers must be protected, even if it is from the delayed action on the part of the Respondents, who failed to put in place a proper mechanism well in time so that the Consumers do not suffer.

" 4. Effect of repeal.- Where this Act or any Himachal Pradesh Act repeals any enactment then, unless a different intention appears, the repeal shall not-

(a) revive anything not in force or existing at the time at which the repeal takes effect; or

(b) affect the previous operation of any enactment so repealed or anything duly done or suffered thereunder; or

(c) affect any right, privilege, obligation or liability acquired, accrued or incurred under any enactment so repealed; or...."

9. The Respondents failed to issue timely notices to the Consumers including the Complainant for termination of the temporary reduction carried out in 2015. The Respondents also failed to issue proper bills, even if his stand is taken to be correct w.e.f. 01/04/2019. The application for permanent reduction carried out by the Complainant should be considered applicable w.e.f. 01/04/2019 due to the lapse on the part of the Respondents.



Accepted
27/4/2023



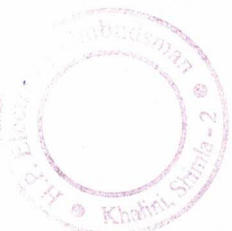
HIMACHAL PRADESH ELECTRICITY OMBUDSMAN
SHARMA SADAN, BEHIND KEONTHAL COMPLEX, SHIMLA-171002
Phone: 0177-2624525, email: ombudsmanelectricity.2014@gmail.com

10. In view of above, the Complainant prayed that the relief as prayed in the representation be allowed in the interest of justice.

F – CGRF Orders:

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 by the Forum;
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 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

Accepted
27/11/2013





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

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:-

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-

(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

(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



*Permit
27/4/2013*



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

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."

Un-Quote

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

Quote

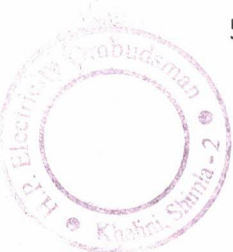
3. Amendment of para 3.10:- For the sign ";" occurring after clause (a) of para 3.10 of the said Code, the sign ":" shall be substituted and thereafter the following provisos shall be inserted, namely:-

"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."

Un-Quote

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



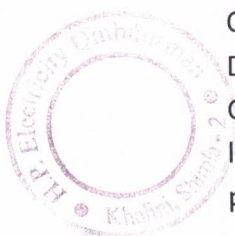
*Exempt
27.4.2023*



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

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 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;



Handwritten signature and date: 27/11/2023



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

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 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 initial sanctioned Permanent Contract Demand of the Complainant was 470 kVA, which it had temporarily

Handwritten signature
27/4/2013





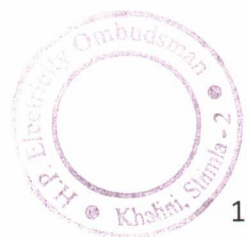
HIMACHAL PRADESH ELECTRICITY OMBUDSMAN
SHARMA SADAN, BEHIND KEONTAL COMPLEX, SHIMLA-171002

Phone: 0177-2624525, email: ombudsmanelectricity.2014@gmail.com

revised to 250 kVA (Temporary Contract Demand) in the year 2016 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. Consequently, the Respondent HPSEBL raised the monetary demand to the Complainant of Rs 11,88,000/= vide Demand Notice placed on record (Annexure C-1) on account of Supply Code 2nd Amendment, 2018, only for those periods (October 2019 to September 2021 i.e 24 months) 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. The Supply Code 2nd Amendment is solely in terms of Temporary Contract and underlying conditions of its duration / validity in a financial year. Thus, the contention of the Complainant that the Supply Code 2nd Amendment is not applicable to him is out-rightly 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-4). Further, the Complainant has relied upon this letter of the Respondent HPSEBL dated 25.10.2018 (Annexure C-4) addressed to its field units, to state that the field units did not implement these instructions well in time;
12. This Forum finds that the ibid letter of instructions dated 25.10.2018 (Annexure C-4) 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 automatically 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;
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

Handwritten signature and date: 27/11/2023

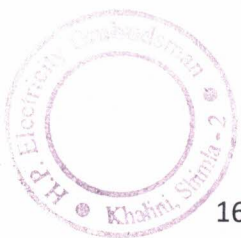




HIMACHAL PRADESH ELECTRICITY OMBUDSMAN
SHARMA SADAN, BEHIND KEONTHAL COMPLEX, SHIMLA-171002
Phone: 0177-2624525, email: ombudsmanelectricity.2014@gmail.com

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 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 to 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;
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



Accepted
27/11/2023



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

also evident from details attached with the 'Demand Notice' dated 13.06.2022 (Annexure C-1) which clearly depicts the period for which the monetary demand was raised, as being October 2019 to September 2021 i.e 24 months. 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 23.09.2021 (Annexure C1) for Rs 11,88,000/=. 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 applicability of amended provisions with effect from October 2019 to September 2021 amounts to giving retrospective effect to the Supply Code 2nd Amendment, 2018. From the observations made above, it is established and safely held that 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

Handwritten signature
27/11/2023



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

Phone: 0177-2624525, email: ombudsmanelectricity.2014@gmail.com

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 23.09.2021 (Annexure C-1), 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 October 2019 to September 2021 (24 months). These provisions have not been applied for the period from 01st April 2019 (i.e when the ibid 2nd amendment became effective) to 30th September, 2019 (6 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 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 C1) 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-1 is accordingly upheld.

G – Analysis of the Complaint:

1. The case file has been requisitioned from the Consumer Grievance Redressal Forum at Kasumpti bearing Complaint No. 1421/3/22/29, dated 06/09/2022, orders on which were passed by the Forum below on 20/12/2022, have been gone through.
2. The documents on record and arguments made by both parties have also been gone through. The submissions made by both the parties have also been incorporated as such above in order to facilitate overall view of the actual submissions made by both the parties. Further, the Orders passed by the Forum have also been reproduced as such.
3. This case is akin to already decided case bearing title M/S Mohan Meakins Vs HPSEB Ltd & others (Case No. 24/2022) orders on which were passed on 31/01/2023 and that of M/S B N Enterprises Vs HPSEB Ltd & others (Case No. 21/2022) orders on which were passed on 21/04/2023. The facts and dates are although different. Now let us examine this specific case.



Leapt
27/4/2023



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

4. The Complainant has a Connected Load of 770 kW with initial Contract Demand as 470 kVA. The Complainant reduced his Contract Demand temporarily in the year 2016 from 470 kVA to 250 kVA which also started reflecting in their energy bills for April 2016 onwards.
5. The Respondents issued a demand dated 23/09/2021 for Rs 11,88,000/- 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. The period of short recovery was 10/2019 to 09/2021. They further charged the demand as Sundry in the energy bill issued in 05/02/2022. The Complainant deposited partial amount of Rs 6,02,910/- on 16/03/2022 under protest vide Cheque No. 887702, dated 16/03/2022 fearing disconnection.
6. Immediately, the Complainant requested for reduction of his permanent Contract Demand to 250 kVA after demand notice dated 23/09/2021 which was affected prospectively. Afterwards, the bills were issued on reduced Contract Demand of 250 kVA.
7. The Respondents didn't reply to objections filed by the Complainant on 07/10/2021, 16/02/2022 and 16/03/2022 and included the amount in the Sundry in February 2022 and even issued the TDCO. Afterwards the Complainant approached the Consumer Grievance Redressal Forum at Kasumpti vide Complaint No. 1421/3/22/29, dated 06/09/2022 which decided the case on 20/12/2022 rejecting the contention of the Complainant.
8. The contention of the Complainant is that the Forum below have wrongly interpreted the meaning of the amendment in Clause 3.10 of Himachal Pradesh Electricity Supply Code 2009 in para 11 of their order and have exceeded their jurisdiction by interpreting the legislation. Further, his contention is that mechanism of resetting of demand automatically in each financial year has nowhere been mentioned in the said amendment. The proviso clearly talks of eligibility of the Consumer to avail Contract Demand for six months at reduced value but there no procedure for resetting the same.
9. His further contention is that despite instructions issued by the Chief Engineer (Commercial) on 25/10/2018, the department slept over for more than three years and kept raising the energy bills on reduced demand of 250 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.
10. The Complainant contention is that the Forum below, without even considering his pleadings had applied the doctrine of "ignorance of law is no excuse" on them whereas the officials of the Respondents remained ignorant over the execution of law for more than two years and the Forum below failed to apply the same doctrine on the Respondents.
11. The Complainant has cited provisions of Clause 6 (c) of General Clauses Act, 1977 as well as Clause 4 (c) of HP General Clauses Act, 1968 (Similar) which states that after the commencement of this Act, repeals any enactment hitherto made or hereafter to be made,

Aupt
27/4/2022



then unless a different intention appears, the repeal shall not 'affect any right, privilege, obligation or liability acquired, accrued or incurred under any enactment so repealed;' or..

12. 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:

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



*Accepted
27/11/2013*

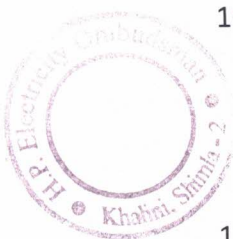


HIMACHAL PRADESH ELECTRICITY OMBUDSMAN
SHARMA SADAN, BEHIND KEONTHAL COMPLEX, SHIMLA-171002
Phone: 0177-2624525, email: ombudsmanelectricity.2014@gmail.com

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."*

13. 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. 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.
14. 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 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.
15. 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 what stopped the Respondent Board to issue correct bills as per tariff immediately after 01/04/2019. Were they not responsible to maintain vigil on change in Law? Had they done that, he would have taken immediate steps to reduce his Contract Demand permanently after issuance of bill on full Contract Demand of 470 kVA immediately after 01/04/2019 itself.
16. His further contention is that the Respondents should have conveyed their intentions to affected Consumers but they failed to do so even after instructions issued by the Chief Engineer (Commercial) on 25/10/2018 and before 01/04/2019. Delayed action by the Respondents have cost the Complainant with additional liability.
17. 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



Accepted
27/11/2019



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

Phone: 0177-2624525, email: ombudsmanelectricity.2014@gmail.com

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 more than 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.

18. Further, since the demand of wrong application of tariff i.e. less charging of Contract Demand was first made in September 2021, 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.
19. The Hon'ble Supreme Court's judgment in CA No. 1672 of 2020 Assistant Engineer Ajmer Vidyut Vitran Ltd & Anr Vs Rahamathllah Khan Alias Rahamjulla is clearing applicable in this case. The 'First Due' in this case is March 2021, may be by the Respondent Board's own findings or pointed out by the Audit.
20. The temporary reduction made by the Complainant in 2016 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.
21. 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.
22. With reference to The General Clauses Act quoted by the Counsel for the Complainant, the Electricity Act, 2003 is also a Central Act and the provisions of Electricity Act, 2003 being later Act and the Regulations made therein by the State Commission shall prevail. Thus, the Change in Regulations/ codes made by the State Commission also can't be ignored which were made applicable by much later date i.e. 01/04/2019 onwards in this case and after inviting the objections from all stake holders following the valid and transparent process.
23. Further, the provisions of General Clauses Act shall only be applicable if the provisions under Electricity Act, 2003 is silent on the issue which is not the case since the Regulations/ Code made under Act have clearly specified that the Consumer is entitled to maintain 50% of the sanctioned Contract Demand for 6 months in a financial year.

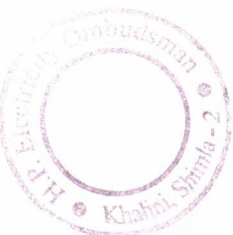


Accepted
27/11/2013



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

24. The Respondents in their arguments have quoted a judgement of Apex Court in CA No. 3902/2006 PTC India Vs CERC citing that on change of legislation, the existing agreements are required to be aligned. The judgement referred by the Respondents is not attracted in the present case however.
25. Now let us examine the Orders passed by the Forum below. The Consumer Grievance Redressal Forum at Kasumpti vide orders dated 20/12/2022 in Complaint No. 1421/3/22/29, dated 06/09/2022 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.
26. The 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 250 kVA in 2016 shall automatically revert back to sanctioned Contract Demand of 470 kVA on 01/04/2019.
27. The Complainant, after receiving the demand for less charges, applied for permanent reduction of Contract Demand to 250 kVA which was made effective prospectively. 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 2016 is deemed to have expired or cease to exist on 01/04/2019.
28. 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 as per 2nd amendment in Himachal Pradesh Electricity Supply Code 2009.
29. 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.



Accepted
27/11/2023



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

30. The Respondents raised the demand for Rs 11,88,000/- considering the Contract Demand of 470 kVA shall be applicable till 30/09/2021. The demand was further reduced permanently by the Complainant to 250 kVA.
31. The orders passed by the Consumer Grievance Redressal Forum at Kasumpti on 17/10/2022 in Complaint No. 1421/3/22/29, dated 06/09/2022 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.
32. The demands raised by the Respondents on 23/09/2021 for Rs 11,88,000/- is 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.
33. 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.
34. 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.

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 23/09/2021 for Rs 11,88,000/- is in line with those provisions of 2nd amendment of Himachal Pradesh Electricity Supply Code 2009?
3. **Issue No. 3:** Whether the orders passed by the Consumer Grievance Redressal Forum at Kasumpti on 20/12/2022 in Complaint No. 1421/3/22/29, dated 06/09/2022 is in line with the existing provisions of Law?



Accepted
27/11/2023



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 2016.
3. However, the same doctrine shall not be applicable for next financial year starting from 01/04/2020 onwards and they should also 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 23/09/2021 for Rs 11,88,000/- is required to be reworked.
2. The Respondents are entitled to recover 100% of Contract Demand of 470 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 250 kVA on 01/04/2020 onwards to level prior to 01/04/2019 and 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 20/12/2022 in

Accepted
27/11/2023



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

Phone: 0177-2624525, email: ombudsmanelectricity.2014@gmail.com

Complaint No. 1421/3/22/29, dated 06/09/2022 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 20/12/2022 in Complaint No. 1421/3/22/29, dated 06/09/2022 are upheld partially subject to the extent of following modification.
 - a) The Respondent Board is entitled to recover full sanctioned Contract Demand of 470 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 250 kVA w.e. from 01/04/2019 onwards till 30/09/2019 and thereafter on 470 kVA w.e. from 01/10/2019 onwards till the Complainant reduced his Contract Demand to 250 kVA within a period of 30 days from the date of issue of these orders or latest by 27/05/2023 positively.
 - c) The Respondents are directed to rework the demands raised on 23/09/2021 for Rs 11,88,000/- as directed above.
 - d) Further, the Respondents are directed to refund the excess amount by 27/05/2023 positively, 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 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 27/05/2023 positively



Leuptr
27/11/2013



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

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 Complaint filed by M/S Milestone Gears (P) Ltd, Plot No. 58, Sector-1, Industrial Area, Parwanoo, Distt Solan, HP-173220 is hereby disposed off.
5. No cost to litigation.

Given under my hand and seal of this office.



[Signature]
27/4/2023
Electricity Ombudsman