



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

In the matter of:

**M/S Ind Swift Ltd., Village Malkumazra, Nalagarh Road, Baddi, District Solan, HP-173205**  
**- Complainant**

**Vs**

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

**Complaint No. 27/2022 (Received on 28/12/2022 and Registered on 31/12/2022)**  
**(Orders reserved on 03/06/2023, Orders issued on 06/06/2023)**

**Counsel for:**

**The Complainant:** Sh. Uday Singh Banyal Advocate

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

**Order**

The case was registered on 28/12/2022. The case was first listed for 28/01/2023. The Respondents were to file their reply by 23/01/2023 and the Complainant was to file his rejoinder by 27/01/2023. Since the Respondents failed to file their reply even by 28/01/2023, the case was listed for 25/02/2023 and 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 again failed to submit their reply even by 25/02/2023 and the case was listed for 25/03/2023. The Respondents were to file their reply by 04/03/2023 and the Complainant was to file his rejoinder by 17/03/2023. The Respondents filed short reply after two hearings on 22/03/2023 on maintainability issue of mandatory 50% payment of outstanding amount which was decided on 25/03/2023. The Complainant had submitted proof already and the Complaint was found maintainable. The Respondents were directed to file their reply on merits of the case by 12/04/2023. The case was listed for 13/04/2023.

The Respondents again failed to file their reply even by date of hearing on 13/04/2023 and as last opportunity, they were given time to file their reply by 27/04/2023. The Complainant was to file his rejoinder, if any by 04/05/2023. The case was listed for 06/05/2023. The Respondents file their reply on 06/05/2023 and the Complainant was to file his rejoinder by 15/05/2023. The case was listed for 27/05/2023.



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*06/06/2023*



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The Complainant filed his rejoinder on 27/05/2023 and the case was further listed for arguments on 03/06/2023. The arguments advanced by both parties were heard and concluded. Orders were reserved. Hence the delay.

**A – Brief facts of the case:**

1. M/S Ind Swift Ltd., Village Malkumazra, Nalagarh Road, Baddi, District Solan, HP-173205 have filed an application through Sh. Madan Lal Sharma (hereinafter referred to as 'The Complainant') under the provisions of Regulation 28 (1) (b) of Himachal Pradesh Electricity Regulatory Commission (Consumer Grievances Redressal Forum and Ombudsman) Regulations, 2013 against the Complaint No. 1454/1/22/10, dated 30/03/2022 orders on which were passed by the Consumer Grievance Redressal Forum at Kasumpti on 30/11/2022.
2. The Complainant have prayed to set aside the orders passed by the Forum below and provide MRI data with load survey data and to send the meter/ check meter/ CT PT to M&T test lab for testing.

**B – The Complainant's submissions:**

1. The Complainant submits that the necessary facts of the case, which have given rise to file the present representation are that he filed a Complaint No. 1454/1/22/10, before the Consumer Grievances Redressal Forum, Kasumpti for the redressal of its grievance that the Respondents have arbitrarily and surprisingly added a sum of Rs. 70,29,345 /- in the monthly bill issued in January 2022 without any prior information or intimation/ notice to him.
2. The Complainant submits that after receiving the afore-said bill, he, approached the concerned sub-division regarding this amount and it was verbally informed that the billed amount was charged on an account of missed phase, from the period w.e.f. 19/05/2020 to 09/06/2021. Further, that he, asked for the load survey data and MRI data of the said period.
3. Further, that the Respondents supplied another calculation sheet dated: 24/03/2022 of revised amount of Rs. 62,30,409/-. However, no detail of the calculation was supplied to him as to how the Respondents have come the conclusion of this magic figure. Feeling aggrieved by the said calculation he requested for MRI data and load survey data, to be supplied so that the same could be looked into after its evaluation and further action is taken, instead of providing the requested information the Respondents threatened to disconnect the power supply.



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4. The Complainant submits that feeling aggrieved, by the acts of omissions and commissions by the Respondents, he filed a Complaint before the Consumer Grievances Redressal Forum, Kasumpti in March/ April 2022. The Respondents filed their reply to the Complaint by taking various objections, the rejoinder was filed to the reply filed by the Respondents. The matter was taken up for hearing and after hearing the matter the order was announced by the Forum on 30/11/2022, whereby, his Complaint was rejected.
5. Further, that now, feeling aggrieved and dissatisfied, by the order passed by the Consumers Grievances Redressal Forum, Kasumpti the same is being assailed on the following grounds amongst others: -
- a) That the impugned order is highly illegal, arbitrary and in violation of any scientific proof available on record before the Forum so as to come to the conclusion in the impugned order. Hence, the order is bad in law and is liable to quashed and set-aside in the ends of justice.
- b) That the Forum has committed a great illegality in law by arriving at a conclusion which is completely based on assumptions, surmises and conjectures. Accordingly, the impugned order is liable to be quashed and set-aside, especially in the facts, when he had specifically sought the relief in its Complaint that the direction be issued to the Respondents to provide MRI data and load survey data, to him, which is its legal and constitutional right, which cannot be denied or throttled by any presumption or assumption by the authorities. In the present case, there is MRI data placed on record, however, the complete load survey data was not supplied to him before deciding the Complaint that means, the complete material/ record was not available before the Consumer Forum who has gone to the extent of holding that everything is well, which is factually not well and correct. Accordingly, the impugned order is pregnant with illegalities and is liable to be quashed and set-aside.
- c) Further, that the Respondents initially raised the additional bill of Rs. 70,29,345/- for the period May, 2020 to June, 2021 in January 2022 after a lapse of 6 months and thereafter, it was revised to 62,30,409/-. Further, that the CGRF, Kasumpti has passed the order, without application of mind and ignoring the very fundamental principle of natural justice that nobody can be judge in his own case. In the present case, there is no material placed on record by the Respondent to come to the conclusion that the additional bill raised of Rs. 62,30,409/- is legal and valid, the Respondent Board did not take any steps to get the metre and CTPT tested from the M&T (Metre Testing) Court so as to come to the conclusion and to find out the fault. The order is based on one calculation drawn by SDO of the concerned sub-division, which can't bind him, because this calculation is not based on any scientific method and procedure. Secondly, the Respondents have not supplied the complete relevant



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detail of load survey data to him despite specifically prayed and requested in the Complaint. Further, that the Forum should have ordered the metre testing of the existing metre along with the check metre and CTPT through M&T division which is located at Solan or from Open testing lab at Jalandhar, so as to reach on a scientific and definite conclusion in a fair and transparent manner. However, in the present case the Forum has committed a grave illegality in law by not complying with the minimum principles of natural justice, and fair play. Therefore, the order impugned in the present representation is liable to be quashed and set-aside.

6. **Nature of relief sought from the Ombudsman:** a) to accept the present representation, by setting aside the impugned order passed by the Forum below and further request to direct the Respondents to provide complete MRI data along with Load survey data; b) to direct the Respondents, to send the original metre (existing metre), check metre, existing CTPT with check CTPT to M&T lab for its testing or to Open Lab, testing at Jalandhar to have exact, scientific, and definite results and thereafter, to recalculate the energy bill and, c) direct the Respondents not to disconnect the power supply to him and also direct not to levy any surcharge on the alleged bill during the pendency of the present representation in the ends of justice and fair play.

**C – The Respondents’ submissions:**

7. The Respondents submit that that the Complaint of the Complainant is not maintainable in the eyes of law hence, liable to be dismissed. Further, that the Complainant has not come with clean hands and has suppressed the material facts before this Id Forum hence, the Complaint is liable to be dismissed.
8. The Respondents submit that the Complainant has preferred the instant Complaint on the basis of the twisted and distorted facts which are far from the reality, hence the Complaint is liable to be dismissed.
9. Further, that the Id CGRF has passed very reasoned and sound order dated 30/11/2022 wherein all the material available before it was properly appreciated thus further interference is not warranted in the matter by this Id Ombudsman.

**Reply on merits:**

10. The Respondents specifically denied that Respondents have arbitrarily have added a sum of Rs 70,29,345/- in the monthly electricity bill of January, 2022 without any prior information and intimation. Further, that record submitted by the Respondents before the Id Forum may kindly be perused which will substantiate the claim the Respondents in its entirety. Further, that Respondents have raised the demand in a very perfect and legal



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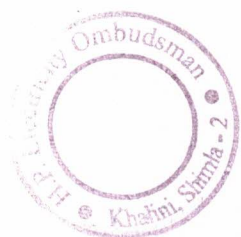




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manner keeping in view the law on the point as well as other relevant material which clearly demonstrates that the on account of the phase missing, the Complainant was short billed, hence the impugned demand to tune of Rs 70,29,345/- is perfect and legal as such the representation preferred by the Complainant is liable to be dismissed.

11. The Respondents submit that the Respondents have supplied all relevant material for the satisfaction of the Complainant to the effect of the phase missing and further that on the proper examination/ perusal of the record placed on record by the Respondents before the Id Forum, the Id Forum has passed the impugned order wherein their demand has been held to be legal and valid.
12. The Respondents submit that complete MRI data/showing temper events and other material have been supplied to the Complainant as stated herein above. So far as Load Survey as demanded by the Complainant is concerned, it is submitted with the utmost respect that the Id CGRF has rendered its findings based on the MRI data which is complete in itself and thus the insistence of the Complainant upon the load survey is totally misplaced and unfounded. Further, that when sufficient material is on record to show the missing of the phase as cited above, the said material may be taken in to consideration by this Hon'ble Ombudsman for the purpose of the deciding the present controversy. However, at the cost of the repetition, it is submitted that since the well reasoned order has been passed by the Id Forum, the interference was sought by the Complainant is not warranted by this Id Ombudsman.
13. The Respondents specifically denied that the Id Forum has passed illegal and arbitrary order. However, if the order passed by the Id Forum is perused in its entirety, it will leaves no manner of doubt that the said order has been passed strictly in accordance with the mandate of law governing the field. The provision of the Supply Code, 2009 has been properly appreciated by the Id Forum by passing the impugned order. Moreover, the material placed on record i.e. the MRI data retrieved from the system is complete evidence to reach in to the conclusion that on account of phase missing, Complainant was short billed and thus the demand as raised by them is totally perfect and valid thus the impugned order is liable to be upheld by this Id Ombudsman.
14. The Respondents submit that the Forum has appreciated all relevant material on record and thus passed well-reasoned and sound order in terms of the law. MRI data as asked by the Complainant stands already supplied to them and also submitted before the Id Forum, which is part of the record. The Complainant cannot brush aside the data as retrieved from the system. The insistence of the Complainant on the load survey data is totally misplaced here. As submitted hereinabove, since from the analysis of the MRI data, there appears prima facie phase missing, in the absence of the load survey, their demand cannot be become bad in law. Further, that load survey data could not be made available



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since it is technically not viable on account of the reason that the software of meter is not enabled to download the same. However, at the cost of the repetition, complete MRI data is available and already supplied and formed the part of the record of the file of the Id Forum, same may be perused for the purpose of the phase missing events.

15. The Respondents specifically denied that the Id Forum has passed wrong decision. Further, that the contention of the Complainant that they have judged its own, it completely baseless and fallacious reason being that the since the Id Forum has been constituted under section 42 (5) of the Electricity Act, 2003 which is statutory one, hence the finding rendered by it cannot be thrown out. Further, it is specifically denied that they did not place any material on record, however, if the MRI data is seen and appreciated properly their demand qua the phase missing, is duly substantiated. The testing of the CT/PT unit as contended by the Complainant is totally irrelevant and misconceived. Further, that Complainant is failed to appreciate the vital fact that there is substantial difference between the meter and metering equipments. Here is not the case of the defective meter but the case revolves to the defective metering equipments i.e. CT/PT. Further, that the on the basis of the MRI data as retrieved from the system, their demand is legal and valid thus there is no such need of the interference by this Id Ombudsman as such the Complaint is liable to be dismissed.
16. The Respondents submit that their demand has been upheld by the Id Forum as such the demand of Rs.62,30,490/- is the assessed amount and the Complainant is required to comply with the Regulation 33 (1) (g) of the HPERC (CGRF & Ombudsman) Regulations 2013, wherein it is crystal clear provided that Complainant has to deposit with the Ombudsman, an amount equal to 50 % of the amount assessed by the Forum.
17. The Respondents thus, keeping in view the facts narrated hereinabove, prays that the representation filed by the Complainant is devoid of any merits and thus liable to be dismissed and the impugned order dated 30/11/2022 passed by the Id Forum in Complaint No. 1454/1/22/10 titled as M/S Ind Swift Ltd versus the Executive Director (Pers.) and others is liable to be upheld.

**D – The Complainant’s submissions through rejoinder:**

**Reply to preliminary submissions: -**

1. The Complainant submits that the Complaint is maintainable and there is an order to this effect passed by the electricity ombudsman on 25/03/2023, therefore, this submission is not tenable and the same has been raised for the sake of submission. As such it is submitted that the present Complaint is maintainable.



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2. The Complainant submits that he has come with clean hands with all detailed facts and material. However, the Respondents have not mentioned or substantiated its contention in support of the contents of the para under reply. Hence, it seems that all the preliminary submissions made by the Respondents in the reply are that the Respondents are performing mere rituals without any cogent material/ record to substantiate the averments. Hence, specifically denied.
3. The Complainant submits that the contents of the para are completely false, incorrect and misleading hence, specifically denied and further submits that when the reply of the Respondents will be perused it will be made clear that they are blowing hot and cold in their reply and the Respondents themselves are not clear and are alleging that the kettle is black.
4. The Complainant submits that the impugned order passed by CGRF, is an order which is based on assumptions and presumptions who have not delved into the real issue, which resulted into miscarriage of justice accordingly, the contents of the para under reply are false and incorrect hence, specifically denied and submits that the impugned order of CGRF is liable to be quashed and set-aside.

**Rejoinder on merits: -**

5. The Complainant submits that the way and the manner in which Respondents are conducting themselves is in itself sufficient to show that they are not knowing as to what they are doing in this case, specifically the Respondents have raised the energy bill to the tune of Rs. 70,29,345/- and subsequently revised to Rs. 62,30,409/- being the final bill. However, in para 1 of the reply the Respondents are holding Rs. 70,29,345/- as perfectly and legal itself is misleading and incorrect hence, specifically denied. Further, that it is clear that it is the Respondents who are distorting, twisting and misleading the facts before this Forum. Accordingly, the representation is liable to be allowed.
6. The Complainant submits that the the averments in reply to the extent that the Respondents had supplied all the relevant material is self-contradictory in its reply itself. When the contents of para 2 of the reply, are read in conjunction with para 5 (b) of the reply the Respondents will be forced to admit that they did not supply the relevant and substantial record to him till date and i.e., load survey data. Accordingly, the contents of the para under rejoinder are false and incorrect hence, specifically denied.
7. The Complainant submits that there is a settled preposition of law that the person cannot be a Judge in his own case, further that he in this case is the Consumer and HPSEBL is the supplier/distributor of energy and there is a contract in between the two and whenever any controversy arises, that is required to be addressed in accordance with law and rules



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of natural justice. In this case, the Respondents all of a sudden raised energy bill of Rs.62,30,409/-, and when he sought the calculations/ the basis of calculations for this magic figure the Respondents are harping and stressing for MRI data whereas till date they have not supplied the complete load survey data to him so as to, legally and genuinely satisfy his grievance, be that as it may be till date complete Load Survey Data, has not been supplied to him and the same has been admitted in its reply, para 5 (b). Further, that the Load Survey Data is quite inconsistent and erratic when it is perused and there is no explanation whatsoever, to this effect. Further, that it is in fact the Load Survey Data which informs the energy and consumption. However, instead of reconciling the load survey data the Respondent are harping on MRI data which does not reconcile with the load survey data. Therefore, the contention of the Respondents that the order passed by CGRF, is correct in this behalf he further submits that without analyzing the load survey data it is not technically possible to come to this conclusion of its correctness. Accordingly, the CGRF, has passed a stereotype order without taxing itself and applying its technical mind in this case. Further, that when, the original meter was removed and check meter was installed no procedure was followed as is provided under the relevant rules, therefore, the entire exercise undertaken by the Respondents unilaterally which is legally not tenable in the eyes of law.

8. The Complainant submits that the Respondents have miserably failed to follow the proper procedure set out in H.P Electricity Supply Code, 2009 which specifically lays down the procedure and the manner in which the Respondent had to conduct themselves. However, in the present case the entire procedure has not been adopted and without following the procedure raised the energy bill first at Rs. 70 lakhs and subsequently Rs. 62 Lakhs at this juncture, that when at this first instance the bill was raised to Rs. 70 Lakhs the company representative agitated the issue with the Respondents, thereafter Respondents gave subsequent bill of Rs. 62 Lakhs. Further, that the Consumer Company had been consistently requesting the Respondents to satisfy as to how the amount has been calculated but till date there is no satisfactory answer by the Respondents and the Respondent Board and its reply before this Ld. Forum has specifically admitted that the Load Survey Data could not be retrieved therefore, the calculations drawn by them are totally not substantial and without any material. More particularly, when there is a provision that in such like situations as in the present case the Board should have followed a fair and transparent procedure established by H.P Electricity Supply Code, 2009 which they did not do as such his Complaint is liable to the allowed with the direction to the Respondents to get it tested from M&T lab established by the Board and thereafter re-calculate the energy bill if any.
9. The Complainant submits that as per the statutory provisions of law, 50% amount was deposited before this Forum. Thereafter, his present representation was entertained and



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further proceedings were initiated. Thus, the contentions of the reply are totally false and misleading hence specifically denied.

10. The Complainant thus, keeping in view the facts and circumstances mentioned herein above, prayed that the present representation may very kindly be allowed by granting the reliefs prayed in the representation in the ends of justice.

**E – CGRF Order:**

1. This Forum has examined the relevant provisions of the Electricity Act, 2003, various relevant Regulations framed by the HP Electricity Regulatory Commission (or the HPERC) including relevant provisions of HPERC (Consumer Grievances Redressal Forum and Ombudsman) Regulations, 2013, HP Electricity Supply Code, 2009, amendments thereto and record as facts along with pleadings of the parties. This Forum has heard the parties at length. The considered opinion of the Forum has been gathered after considering the fair facts, evidences and correspondence placed on record and arguments adduced by both the parties;
2. The primary issue arising from the Complaint for determination by Forum is whether there was one (1) phase of voltage missing in the installed three (3) phase meter of the Complainant and whether Complainant is liable to pay monetary demand arising from less recording of consumption on the installed meter vis-à-vis actual consumption done by the Complainant;
3. At the outset, it is observed by this Forum that the Complainant has merely prayed for and sought relief only in terms of directions by the Forum to Respondents to provide him with Meter Reading Instrument (or MRI) and load survey data and to direct Respondent to recalculate the ibid amount per MRI data. Further, Forum observes that the Complainant has not laid challenge to the legal vires of the ibid monetary demand (Annexure C1) / (Annexure C-3), as being in contravention in any way to the statutory provisions and has also not disputed nor placed challenge to the correctness of the monetary demand raised by the Respondent HPSEBL which was later corrected to Rs 62,30,409/= (Annexure C-3);
4. The Forum finds that the Complainant, without substantiating his dispute with facts and proof, is simply denying the slowness of meter / metering error in the 'Initial meter' by merely attributing the metering error to the connection arrangements due to the 'Check meter' and also by merely referring to the period of dispute being that when covid-19 restrictions were imposed by the Government;



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5. This Forum further observes from record that the Respondent HPSEBL has considered the readings / consumption of the 'Check meter' for the period 09/06/2021 to 23/06/2021 (Annexure A-1) / (Annexure R-blank- ) to establish the fact of one phase missing as appearing in the MRI data sheet of 'Initial meter' (Annexure R-blank- ), during the period 19/05/2020 to 09/06/2021;
6. This Forum also observes from record that the MRI data sheet namely 'Voltage Related Events', in respect of 'Initial meter', depicts the start of missing of phase voltage as 19<sup>th</sup> May, 2020. Further, the MRI data sheet namely 'X0697041-Events' in respect of 'Check meter' depicts the end of the missing phase as 23<sup>rd</sup> June, 2021;
7. During the course of arguments, the Complainant merely pressed that there was no phase missing and that the load survey data provided by the Respondent HPSEBL was incomplete;
8. Here, this Forum briefly delves into the technical aspects of a missing phase in a meter and its implications. It is an established fact that the total electricity consumption recorded in a three (3) phase meter installed for a three (3) phase electricity connection, is three (3) times the consumption against each phase. The fact that one phase is missing in a meter, implies 33.3% (or  $\frac{1}{3}$ <sup>rd</sup> of actual electricity consumed) less recording in a meter vis-à-vis actual consumption on the three (3) phases of the meter. Thus, the actual energy consumption and its metering are two distinct aspects and these two aspects may not at all times be in consonance and there may be disparity between the two at any time, owing to several reasons such as defective meter, defective meter connections from PT and/or CT, human error intentional or unintentional etc.
9. Therefore on the basis of ibid technical position, when it is established that a phase of voltage to a three phase meter is missing and for the simple reason that electricity/energy against the missing phase of meter has actually been consumed, which could not be billed owing to such remaining unnoticed, it can safely be concluded that actual consumption by a Consumer, is certainly in excess of that recorded on the meter and Consumer is liable to make good any monetary loss that may have resulted to the distribution licensee. Non-recording or less recording by a meter cannot be a reason to allow free ride to any Consumer for the actual consumption of electricity that was made by the Consumer in the past. Therefore, in cases of phase missing in the installed meter, the Consumer is liable to make payments towards the unrecorded part of consumption estimated on reasonable grounds, being  $\frac{1}{3}$ <sup>rd</sup> (or 33.33%) of electricity charges remaining to be paid under the said conditions. No one is entitled to adversely use the deficiencies in a system to their advantage, such as to cause loss in any way to the system. Not allowing such loss to be recovered likely results in malpractices and connivances which are detrimental to the system;

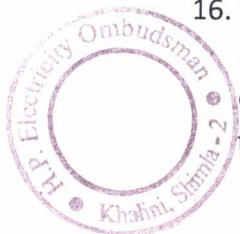


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10. This Forum further finds that that the Complainant despite having obtained the MRI data and load survey sheets from Respondent before filing of the Rejoinder, could no-where establish that the phase of voltage in the meter was not missing;
11. In wake of the MRI data having being made available to the Complainant by the Respondent HPSEBL for proving its case, mere non-acceptance of a fact by the Complainant without proper justification/ proof / evidence, just does not suffice;
12. Record does not lie. Considering the facts depicted by way of MRI data (Annexure R-blank-) and the calculations of the Check Meter consumption (Annexure A-1) / (Annexure R-blank-), this Forum safely holds that one phase in 'Initial meter' was actually missing and therefore, Forum finds no force in the arguments made by the Complainant that the missing phase is attributable to the connection arrangements of the Check meter. The fact of missing voltage phase has merely been denied by the Complainant. This Forum also holds that dispute raised by the Complainant has not been done on valid grounds;
13. This Forum, in accordance with the 'Check meter' calculations and the MRI data, placed on record by the Respondent HPSEBL (Annexure A-1) / (Annexure R-blank-) also holds that the metering error of one phase of voltage missing in a three-phase installed meter, has existed even up-till the date 23/06/2021;
14. On the basis of foregoing, this Forum holds without any iota of doubt that there was an error in meter recording attributable to one (1) missing phase of voltage in the installed three (3) phase meter, for the period 19/05/2020 to 23/06/2021, which is evident from the ibid MRI data sheets in respect of the Initial meter and the results of the Check meter and Complainant is liable to make good any monetary loss to the Respondent HPSEBL on this count;
15. From the foregoing considered view of the Forum and given the fact that there is a three (3) phase electricity supply connection being availed by the Complainant, the Forum safely concludes that this condition of one phase missing resulted in non-recording of one third ( $\frac{1}{3}^{\text{rd}}$ ) of the overall consumption of electricity made by the Complainant Consumer in the past. Thus, Complainant in the past has only paid for two third ( $\frac{2}{3}^{\text{rd}}$ ) of the actual consumption and it is now liable to pay for balance of one third ( $\frac{1}{3}^{\text{rd}}$ ) of this consumption on detection of the error / bona-fide mistake by the Respondent HPSEBL;
16. In view of the established fact of one phase of voltage missing in the meter resulting in recording of one third ( $\frac{1}{3}^{\text{rd}}$ ) less consumption and therefore one third ( $\frac{1}{3}^{\text{rd}}$ ) less recovery of price / charges of electricity, the ibid argument made by the Complainant with regard to covid-19 restrictions imposed by the Government, is neither relevant nor tenable and



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the Forum rejects the same for the sole reason that consumption had actually taken place in the past for which less amount was charged by the Respondent HPSEBL then and which the Complainant is now liable to pay for the balance consumption of electricity;

17. In view of foregoing position, once it is settled that there was an error of one missing phase of voltage being recorded by the meter from 19/05/2020 onwards, as is evident from the MRI sheets of the Initial meter placed on record and the results of the Check meter, the only remaining issue as perceived from the Complaint by the Forum that needs to be decided, is whether the Respondent can raise arrears of past period for an error or mistake that occurred in the past and whether Complainant Consumer of the HPSEBL is or is not liable to make payments towards the ibid metering error of one phase missing which existed in the past and which went unnoticed being a bona-fide mistake / error and which was later raised vide impugned Bill dated 13/01/2022 (Annexure-C1) / further corrected vide (Annexure C3);
18. After examining the record, facts and settled position of law coupled with provisions of the Electricity Act, 2003 on the matter, it is established that the issue of recovery of past dues of arrears by the DISCOM is no more res-integra, in view of the settled position of law laid by the Hon'ble Apex Court in the matter titled as Assistant Engineer (D1) Ajmer Vidyut Vitaran Nigam Ltd and Anr Vs Rahamutullah Khan alias Rahamjula in Civil Appeal No 1672/2020 decided on 18/02/2020 and M/s Prem Cottex Vs Uttar Haryana Vijli Vitran Ltd in Civil Appeal No7235 of 2009 decided on October 5, 2021. In the instant matter, the issue of the monetary demand of Rs 70,29,345/=in electricity Bill dated 13/01/2022 (Annexure C1) which was later corrected to Rs 62,30,409/= when examined, it is found that the demand has been raised at the behest of a metering error which existed in the past being a bona-fide mistake / error and which was later noticed by the Respondent and a monetary demand against this was raised as sundry in the ibid bill;
19. In the ibid Judgment of the Hon'ble Supreme Court dated 18/02/2020, which refers to other Judgments, Electricity has been held to be 'goods' by a constitution bench of the Hon'ble Apex Court in a case titled State of Andhra Pradesh Vs National Thermal Power Corporation Ltd. Further as also referred to in the Judgment ibid, under the Sale of Goods Act, 1930, a purchaser of goods is liable to pay for it at the time of purchase or consumption and that the quantum and time of payment may be ascertained post facto either by way of an agreement or the relevant statute. It is therefore evident from settled law that while the Consumer uses electricity being a good, the distribution licensee charges for this electricity / good at the specified tariffs/ charges of electricity which are determined by the Ld HP Electricity Regulatory Commission (HPERC) vide its Tariff Orders passed in pursuance to Regulations framed under the Electricity Act, 2003. These tariffs / charges are applied to the consumption or goods and thereafter a Bill or monetary demand is raised to the Consumer. Thus, Forum is of the considered opinion that the



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Respondent HPSEBL being a distribution licensee cannot recover any tariff / charges in excess of that specified by the HPERC. At the same time, it is also relevant to mention that the Respondent HPSEBL being a distribution licensee, is bound to recover the cost / price of electricity consumed by a Consumer strictly, as per tariffs / charges that are determined and specified by the HPERC vide its Tariff Orders. Accordingly, the Consumer is bound to pay for the electricity consumption at the determined tariffs / charges being of statutory nature. These Tariff Orders lay out statutory charges. Any lapse, mistake or bona-fide error by the distribution licensee with regard to under recovery of actual tariff / cost / price of electricity, if not recovered from the respective Consumer, who has availed the goods, may result either in permanent loss to the distribution licensee being a public utility or with the burdening of this utility's loss upon other Consumers. Both of these situations or eventualities are bad and against mandated provisions of Tariff Regulations on the matter;

20. In the matter, this Forum holds that the Respondent HPSEBL did make a bona-fide mistake / error in the past by missing to raise amounts in the original Bill arising out of less recording of meter reading due to missing voltage in one phase of the meter, which went unnoticed for some time. The Respondent is certainly within his legal rights to raise past arrears or dues if not discovered earlier due to any mistake as has been held in Hon'ble Apex Court Judgment dated 18/02/2020 in Civil Appeal 1672/2020 while interpreting section 56(2) of the Electricity Act, 2003. However, onus would still lie on the Complainant to show that such arrears have been calculated wrongly or is hit by limitation of 2 years prescribed in ibid section 56(2), which is conspicuously missing on the part of the Complainant;
21. On aforesaid terms, this Forum does not find force in the Complaint. The monetary demand of Rs 70,29,345/= raised in Bill dated 13/01/2022 (Annexure C1) which was later corrected to Rs 62,30,409/= is upheld by the Forum and the Complainant is liable to pay the same. The Complaint is accordingly decided against the Complainant and in favour of the Respondent HPSEBL. The Complainant is liable to pay the additional amounts due to metering error on reasonable estimate of 33.3% less recording of consumption by meter and as assessed by Respondent HPSEBL on account of defective metering which is further reflected in the electricity Bill dated 13/01/2022 (Annexure C1);
22. This Forum further finds and observes that once the 'Check meter' established the fact of a missing phase voltage, the Respondent HPSEBL has still considered the shortfall only up to 09/06/2021 instead of 23/06/2021, for reasons best known to the Respondent HPSEBL;
23. This Forum also observes that in majority of Complaints, as also observed in this instant Complaint, issues of past arrears as monetary demands by the HPSEBL are raised by the Complainants in general. These arrears may account for huge multiples of the running



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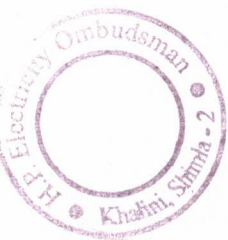


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bills of the Consumer. Such demands of past period arrears may impose hardships upon the Consumers on their inability to pay such huge amounts along with the running bills in one go. In this regard, the Forum advises that the Respondent HPSEBL may evolve a suitable mechanism after seeking approval of the HPERC, for mitigating the plight of Consumers, who may be oblivious of such huge amounts of arrears accruing against them due to some bona-fide error on the part of the distribution licensee. However, till such time any suitable mechanism is evolved, the Respondent HPSEBL may consider charging an equivalent amount of monthly running electricity bill as instalment of arrear in the bill of the respective Consumer, till such time the total amount of past period arrears are not received. This mechanism can then also justify electricity disconnection for non-payment of electricity bill under section 56 of the Electricity Act, 2003 while also avoiding unnecessary litigation and at the same time mitigating the plight of Consumers;

24. Further, on statement by the Complainant that the concerned Assistant Engineer had remarked that no separate Notice of disconnection is required due to a 'Note' of disconnection on the Electricity Bill, this Forum takes strong exception to such like statements passed, if any, by the concerned Assistant Engineer. This occurrence has not been denied by the Respondent in its Reply. This Forum categorically informs the Respondent HPSEBL that a separate Notice of 15 days under sub-section 56(1) of the Electricity Act, 2003 is a sin-qua-non before any action of disconnection by the Respondent HPSEBL is taken especially when past arrears are raised and such knowledge of bare law is expected of the Respondent No.3 so as to prevent arbitrariness in functioning that may result in litigation. In fact, this Forum observes that matter was allowed to be litigated by way of Complaint when such could have easily been avoided by way of giving access of the record of the MRI to the Complainant by Respondent No 3 in the start itself, which was eventually obtained by the Complainant. In such like matters, where monetary demands on grounds of defective metering are noticed for recent periods observed from MRI data and where MRI data exists, the Respondent HPSEBL is directed to ensure that concerned office of the Respondent HPSEBL shall at the first instance provide photocopy / print of such record of the MRI to the Consumer.

25. In the aforesaid terms, the Complaint being devoid of substance and merits is rejected. The Complaint is accordingly decided on merits against the Complainant and in favour of the Respondents HPSEBL and stand disposed of as dismissed.



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*06/06/2023*





**F – Analysis of the Complaint:**

1. The case file at Consumer Grievance Redressal Forum at Kasumpti in Complaint No. 1451/1/22/10, dated 30/03/2022 have also been requisitioned and gone through.
2. The documents on record and the arguments made by both the parties have also been gone through.
3. The submissions made by both the parties have also been reproduced above just to have bird eye view of the case.
4. The Complaint have been filed under the provisions of Regulation 28 (1) (b) of Himachal Pradesh Electricity Regulatory Commission (Consumer Grievances Redressal Forum and Ombudsman) Regulations, 2013.
5. The Complainant contended that the Respondent Board included a sum of Rs 70,29,345/- in the monthly energy bill issued in January 2022. Further, on enquiry and approaching the Respondent Board, another calculation sheet was supplied dated 24/03/2022 for Rs 62,30,409/- as revised amount.
6. The Complainant requested for MRI data which was not supplied initially to the Complainant and the Complainant then approached the Consumer Grievance Redressal Forum at Kasumpti vide Complaint No. 1454/1/22/10, dated 30/03/2022. MRI data was placed on record as Annexure to the reply dated 28/06/2022.
7. The Complainant again requested for load survey data at the Forum below. The Complainant also requested for testing of CT PT and meter from M&T lab of the Distribution Licensee or at open lab at Jallandhar. The Complainant further contended that neither load survey data nor request for testing of CT PT and Meter was acceded to by the Respondent Board.
8. He has further requested to quash and set aside the orders passed by the Forum below and direct the Respondents to supply load survey data and testing of CT PT and Meter.
9. Now let us examine the reply filed by the Respondents on dated 06/05/2023. They have defended the orders passed by the Forum below on 30/11/2022. The Respondents have further contended that they have supplied all relevant material to the Complainant to the effect of phase missing and the Forum below have also passed orders after carefully examining the record. Further, MRI data shows that missing of phase was detected.



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*06/06/2023*



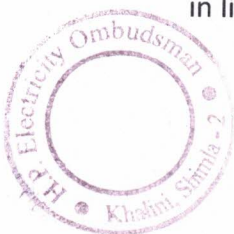


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10. Now let us examine the MRI data submitted by the Respondents at Forum below. MRI data shows that on 19/05/2020, one phase in PT is missing which continued till 23/06/2021. They have worked out the rates based on the Consumption recorded in MRI and added the consumption for phase miss. They have worked out the details for around 32% slowness recorded by the meter.
11. However, in the calculation sheet for revised amount of Rs 62,30,409/-, they have taken the end of event date as 23/05/2021.
12. From the data, it appears that due to phase missing in PT, meter recorded consumption as around 32% slow which appears to be correct.
13. Now let us examine the orders passed by the Consumer Grievance Redressal Forum at Kasumpti on 30/11/2022. The data shows that the event ended on 23/05/2021 which is also reflected in the revised calculation sheet whereas another record shows the event end as 23/06/2021. The Forum below have also taken the event end as 23/06/2021 on Respondents-phase.
14. They further observed that the meter was 33.3% slower and the Complainant have paid only for 2/3<sup>rd</sup> of the actual consumption. They have further considered the mistake as bonafide mistake.
15. This Appellate Forum also agrees with the observations made by the Forum below that this type of event is covered under the category of bonafide mistake and as per settled position of law laid down in Apex court judgement in CA 1672/2020 titled Assistant Engineer (D1) Ajmer Vidyut Vitran Nigam Ltd and Anr Vs Rahamatullah Khan alias Rahamjula, the consumer is liable to pay for the bonafide mistake as and when detected.
16. This Appellate Forum agrees with the findings made by the Forum below in their order dated 30/11/2022 and find no inconsistencies with the Regulations/ Codes/ Rules etc.

**G – Issues at hand:**

1. There is only one issue, whether the orders passed by the Consumer Grievance Redressal Forum at Kasumpti on 30/11/2022 in Complaint No. 1454/1/22/10 dated 30/03/2022 is in line with the prevalent Rules/ Law/ Regulations/ Codes etc. or not?



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06/06/2023





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**H – Findings on the Issues:**

**Issue No. 1**

1. As is evident from the analysis done above and documents on record, the orders passed by the Consumer Grievance Redressal Forum at Kasumpti on 30/11/2022 in Complaint No. 1454/1/22/10 dated 30/03/2022 is in line with the prevalent Rules/ Law/ Regulations/ Codes etc.
2. However, the Respondent Board is required to check the calculation again keeping in view the inconsistency in the end date of event shown in MRI sheet and calculation sheet for Rs 62,30,409/-.

**I – Order:**

1. The orders passed by the Consumer Grievance Redressal Forum at Kasumpti on 30/11/2022 in Complaint No. 1454/1/22/10 dated 30/03/2022 is upheld and modified to the following extent.
2. The Respondents are directed to check the inconsistency of end of event date in MRI data and calculation sheet for Rs 62,30,409/-.
3. The Complaint filed by M/S Ind Swift Ltd., Village Malkumazra, Nalagarh Road, Baddi, District Solan, HP-173205 is hereby disposed off.
4. No cost to litigation.

Given under my hand and seal of this office.



*Kasumpti*  
Electricity Ombudsman 06/06/2023