



In the matter of:

**Complaint No. 16/2023**

**M/Swastik Industries R/O Plot No. 41-42, Sector-1, Industrial Area, Parwanoo, District Solan,  
HP-173220**

**- Complainant**

**Vs**

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

- 1. Complaint No. 16/2023 (Registered on 30/06/2023)**
- 2. (Orders reserved on 30/11/2023, Issued on 12/12/2023)**

**Counsel for:**

**The Complainant:** Sh. Rakesh Bansal authorized Representative  
**The Respondents:** Sh. Kamlesh Sakhlaini Under Sectt. Law  
Sh. Rajesh Kashyap Advocate

### **Order**

1. The case was received and registered on 30/06/2023 under provisions of Regulation 28 of Himachal Pradesh Electricity Regulatory Commission (Consumer Grievances Redressal Forum and Ombudsman) Regulations, 2013 on dated 30/06/2023 against the final Orders passed by the Consumer Grievance Redressal Forum (CGRF) at Kasumpti in Complaint No. 1421/4/22/37, dated 24/05/2023.
2. The Complainant was asked to convince this court whether any amount was required to be deposited in the instant case out of the disputed amount with the Respondents as required under the provisions of Regulation 33 (1) (g) of Himachal Pradesh Electricity Regulatory Commission (Consumer Grievances Redressal Forum and Ombudsman) Regulations, 2013. The case is listed for hearing on dated 27/07/2023.
3. Case called, heard both the parties. The Complainant during the course of hearing submitted a calculation sheet based upon the data available with him which showed disputed amount as Rs 4,72,500/- and 50% amount computed was Rs 2,36,250/-. However, this court was not convinced with the computations in the absence of authentication/verification. As such this Appellate Forum took the cognizance of amount of Rs 11,25,000/- appearing in Consumer Grievance Redressal Forum at Kasumpti order dated 24/05/2023 under item (26) which was also annexed as Annexure -C2 with the petition. Although, there was a mention of some other





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

Phone: 0177-2624525, email: [ombudsmanelectricity.2014@gmail.com](mailto:ombudsmanelectricity.2014@gmail.com)

causes of dispute and disputed amount in the petition, but for the initiation of proceedings, complainant might deposit 50% of the said amount i.e. Rs 5,62,500/- if not deposited during adjudication process with Consumer Grievance Redressal Forum at Kasumpti. The case was fixed for further hearing on dated 22/08/2023.

4. Due to inability of Sh. Rakesh Bansal, the authorized Representative for pleading the said case on behalf of the Complainant to attend the court due to inclement weather conditions as informed through e-mail 21/08/2023, the proceedings could not take place as scheduled on dated 22/08/2023. The counsel for respondent informed this court that they had imparted instructions for implementation of Consumer Grievance Redressal Forum at Kasumpti order No. 1421/4/22/37 dated 24/05/2023. However, they would confirm the same in the next hearing. The case was further listed for hearing on 29/08/2023.
5. The counsel for Respondent Board could not appear due to ill health as conveyed by Sh. Rajesh Kashyap, the standing counsel for Respondent Board during the course of hearing. As such the Respondent Board could not confirm this court regarding instructions imparted for implementation of Consumer Grievance Redressal Forum at Kasumpti order No. 1421/4/22/37 dated 24/05/2023. The case is further listed for hearing on 28/09/2023.
6. Case called, heard both the parties. Sh. Rakesh Bansal, the authorized Representative for the complainant confirmed implementation of Consumer Grievance Redressal Forum at Kasumpti order and appraised this court regarding the requisite refund as due, given by the Respondent Board. He was further directed to update the status of refund within weeks' time through written submissions including calculation sheet duly signed. He further added to the discussions that the matter will continue for adjudication for remaining issues. The case was listed for hearing on 16/10/2023.
7. Heard both the parties. The authorized Representative for the complainant confirmed implementation of Consumer Grievance Redressal Forum at Kasumpti order and appraised this Appellate Forum regarding the status of requisite refund and pending matters of dispute in terms of interims order dated 28/09/2023 through written submissions. He also prayed for initiation of proceeding on the pending issues. The counsel for Respondents agreed and prayer granted. The Complainant was further directed to supply the copy of written submission on pending issues to Respondent Board also. The Respondent Board was directed to submit reply within weeks' time and rejoinder if any by the Complainant immediately after submission of reply by the Respondent Board. The case was further listed for Arguments on 30/10/2023.
8. The Arguments could not be conducted as the Respondent Board could not submit the reply as per this court order dated 16/10/2023 and prayed for another weeks' time for submission of reply. As a special request, last opportunity was granted for submission of reply with in weeks' time and subsequent rejoinder if any by the Complainant thereof.
9. It was also decided during the course of hearing that the Respondent Board shall not rely upon the earlier reply submitted before Consumer Grievance Redressal Forum at Kasumpti in the said case, as discussed in the last hearing on 16/10/2023 and shall submit fresh reply what so ever the case may be, as this practice may not be fruitful in legitimate disposal and may put embargo in the process of prudent response to the rejoinders in many cases. After listening to both the parties, the matter was listed for final Arguments on 30/11/2023.
10. The matter was heard. Both the parties advanced their arguments. In the absence of reply, still awaited from Respondents, it was decided after having mutual consensus of both the parties that since the contentions of averments shall remain same as already stands submitted before



*Ruphal*





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

Phone: 0177-2624525, email: [ombudsmanelectricity.2014@gmail.com](mailto:ombudsmanelectricity.2014@gmail.com)

Consumer Grievance Redressal Forum at Kasumpti during proceedings in complaint No. 1421/4/22/37 & order dated 24.05.2023 in the said matter, whether submissions by the Complainant or subsequent reply by the Respondents or rejoinder whatsoever, may be considered for the purpose of closing of proceedings in the instant case. This court agreed with the view points and consensus of both the parties on this account to avoid further delay in the matter. The arguments thereafter were conducted as per schedule and concluded. Hence delay.

**A-Brief Facts of the Case:**

1. M/Swastik Industries R/O Plot No. 41-42, Sector-1, Industrial Area, Parwanoo, District Solan, HP-173220 has filed an application under provisions of Regulation 28 of Himachal Pradesh Electricity Regulatory Commission (Consumer Grievances Redressal Forum and Ombudsman) Regulations, 2013 on dated 30/06/2023 against the final Orders passed by the Consumer Grievance Redressal Forum (CGRF) at Kasumpti in Complaint No. 1421/4/22/37, on dated 24/05/2023.
2. The Complainant M/s Swastik Industries, bearing consumer ID 100012000705 is a Large Industrial Power Supply (LIPS – HT) category consumer of the Respondent HPSEBL.
3. On 30.03.2010, the Original or Permanent sanctioned Contract Demand of the Complainant was 750 kVA, which was reduced by the Complainant to 500 kVA on 12.10.2012 on permanent basis.
4. Thereafter in September 2014, the Complainant temporarily revised its Contract Demand (Temporary Contract Demand) to 450 kVA.
5. The instant matter is regarding raising of monetary demand (in Rs) by the Respondent HPSEBL to the Complainant vide Demand Notice dated 16.11.2022 for the period of 33 months from 01.04.2019 to December, 2021, pursuant to HP Electricity Supply Code (Second Amendment) Regulations, 2018 which was notified on 31.07.2018 and which became effective from 01.04.2019 (here-in-after referred to as Supply Code 2nd Amendment, 2018 or Supply Code 2nd Amendment).

**B-The Complainant's Submission:**

1. The Complainant submits Complaint under Regulation Nos. 28 of the HPERC Consumer Grievances Redressal (Consumer Grievances Redressal Forum and Ombudsman) Regulation 2013 against the **Order dated 24.05.2023 passed in Complaints No. 1421/4/22/37** in Complaint titled as M/s Swastik Industries Vs. HPSEB Limited and others by the Consumer Grievances Redressal Forum of HPSEB Limited Consumer Kasumpti, Shimla-9.

**PROLOGUE/ BACKGROUND:**

2. The Complainant submits that Swastik Industries, is filing the said complaint through Karan Mittal, authorized signatory of the firm, who has been authorized vide resolution to sign, institute, verify swear affidavits, suits, complaints, appeal and other proceedings to protect the interest of Swastik Industries and to engage counsel(s)/Advocate (s)/ representatives (s). The complainant firm is filing the said complaint under Regulation Nos. 28 of the HPERC (Consumer Grievances Redressal Forum and Ombudsman) Regulation 2013. The complainant/applicant firm is a consumer under the Electricity Act, 2003 i.e. Section 2 sub-



*Karan Mittal*





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

Phone: 0177-2624525, email: [ombudsmanelectricity.2014@gmail.com](mailto:ombudsmanelectricity.2014@gmail.com)

Section 15 and the respondents are distribution licensee under Section 2 sub-section 17 of the Electricity Act, 2003. The complainant firm 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. The complainant 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.

**3. Facts of the Case**

2010	Load of 700 kW with 750 kVA of contract demand was sanctioned and released to the complainant.
27.07.2012	Application No. 31/LS dated 27.07.2012 for permanent reduction of contract demand from 750 kVA to 500 kVA was filed by the complainant vide fresh Application and Agreement form (A & A Form) which was accepted by the respondents. The processing fee was remitted vide Rct. No. 0021191 dated 12.10.2012 for Rs. 6250.
Nov-12 to Aug 2014	The contract demand of 750 kVA was charged in the monthly bills issued to the complainant instead of 500 kVA the application for which was processed in 2012. This resulted in overcharging of demand charges the rate of which was Rs. 300 kVA. The detail of overcharging has been placed at Annexure C2, as has been calculated by the complainant. The period allowed under the rules and regulations for processing of contract demand revision is one month.
Aug 2014 to March 2019	After the introduction of the concept of temporary reduction of contract demand in the tariff for FY 2013-14, the complainant applied for further reduction of contract demand on temporary basis to a level of 450 kVA, which was processed by the respondents and the bills were thereafter issued on the basis of 450 kVA w.e.f. September 2014. The bills issued by the respondents thereafter never reflected the sanctioned contract demand of the complainant, whether it was 750 kVA or 500 kVA. The bills were only showing the contract demand for billing purposes as 450 kVA.
July 2018	Second amendment in Supply Code, 2009 was notified which restricted the benefit of temporary revision to six months in a financial year, which earlier was available on continued basis until withdrawn by the consumer. The said amendment was to be effective from 01.04.2019.
01.04.2019 to 03.12.2022	The respondents continued to bill on the basis of reduced demand of 450 kVA.
16.11.2022	The respondents issued a demand notice for Rs. 28,35,000 claiming difference of demand charges between 450 kVA and 750 kVA for the period

*Ruphal*





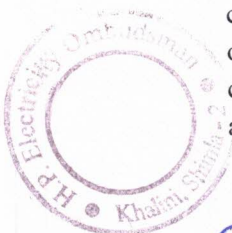
**HIMACHAL PRADESH ELECTRICITY OMBUDSMAN**  
**SHARMA SADAN, BEHIND KEONTAL COMPLEX, SHIMLA-171002**

Phone: 0177-2624525, email: [ombudsmanelectricity.2014@gmail.com](mailto:ombudsmanelectricity.2014@gmail.com)

	between 01.04.2019 upto December 2021 for 33 months.
03.12.2022 to 02.03.2023	The respondents started issuing bills on the basis of 750 kVA for a period of three months.
26.12.2022	The complainant filed a grievance with CGRF at Shimla, which was registered as complaint number 1421/4/22/37
21.01.2023	The complainant was left with no option than to once again reduce the contract demand permanently. This time the complainant reduced it to 400 kVA. Application filed for reduction on 21.01.2023. The complaint also paid processing fee of Rs. 8250 of 21.01.2023. The time allowed for processing under the rules is 30 days.
24.05.2023	CGRF partially allowed the complaint.

**Contentions of the Complainant:**

4. The Complainant submits that The Ld. CGRF has not allowed the refund of demand charges overcharged during the period Nov, 2012 to August 2014. The Forum in Para 24 and 25 of the order has observed that the cause of action arose in November 2012 and thereafter continued up to August 2014 after as many as 10 years and the matter has been submitted after the lapse of ten years. The Forum has wrongly held that the provisions of Regulation 19(c) of HPERC (Consumer Grievances Redressal Forum and Ombudsman) Regulations, 2013. Since, the fresh cause of action arose when the demand notice dated 16.11.2022 related to recovery of demand charges in which the complainant came to know that the application for reduction from 750 kVA to 500 kVA submitted in 2012 was probably not processed by the respondents even till 2023 even after a lapse of 11 years. The respondents cannot be allowed to get away even after contravening the provisions of the section 43(3) of the Electricity Act, 2003 read with HPERC (Standards of Performance) Regulations, 2010. This is a clear cut case of contravention in which the respondents are to be penalized under the applicable provisions. The Electricity Act, 2003 is a consumer centric Act, with one of the major objectives to ensure consumer advocacy.
5. The Complainant submits that as far as the refund of Rs. 11,25,000/- is concerned, the complainant was all time waiting for the overhauling of his account and was rather shocked that after 10-11 years he was slapped with additional charges on the basis of the contract demand of 750 kVA. The application of the complainant was admittedly deemed to be sanctioned after the expiry of one month.
6. The Complainant submits that the Ld. CGRF in a similar case in the matter of M/s JSK International versus HPSEBL, in complaint number 1454/2/16/022 dated 22.09.2016 had ordered cost of Rs. 20,000/- as token and also ordered the respondents to pay the compensation @ Rs. 200 per day for the period of delay in processing the file. The said order of the CGRF has attained finality and has never been challenged by the respondents in any court of law. The said matter was also such that the period after which the CGRF was approached was more than two years, while the Regulation 19(c) was still in force at the time.



*Pushpal*





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

Phone: 0177-2624525, email: [ombudsmanelectricity.2014@gmail.com](mailto:ombudsmanelectricity.2014@gmail.com)

7. The Complainant submits that in the HPERC (Consumer Grievances Redressal Forum and Ombudsman) Regulations, 2013, there is no such limitation period of two years, nor there is anything that bars the Hon'ble to entertain an issue which is older than two years. The Hon'ble Ombudsman and even the CGRF has decided several matters in the past, wherein the decisions have been passed in favour of the consumers, with respect to wrong billing and the matters of Infrastructure Development Charges and even the matters related to interest on security. The complainant cannot be denied justice as the timely processing of the file was a statutory duty of the respondent, in discharging which they have miserably failed in performance. The complainant is thus eligible for the refund of overcharged amount of Rs. 11,25,000/- along with interest, penalty and compensation as per rules and regulations and the provisions of the Electricity Act, 2003.
8. The Complainant submits that the CGRF has also erred that while on one hand it has considered the application for reduction of 500 KVA as a valid application, while on the other hand has denied benefit / overhauling on the basis of the same for the past period between 2012 and 2014. The CGRF should have solely relied on the evidence and consequential benefits were required to be ordered in totality in order to maintain fairness. But the CGRF has merely acted to protect its officers who were guilty of non-performance.

**Consideration of 500 kVA instead of 750 kVA for the purpose of demand notice and consequential damage.**

9. The Complainant submits that the Ld. CGRF has although allowed this contention of the complainant and has held that 500 kVA be considered and a revised demand notice be served to the complainant. But, the Ld. CGRF has failed to deliver relief in terms of consequential financial charges added in the bills such as late payment surcharge. The respondents levied the amount of demand notice as Sundry charges in the bill issued in the month of February 2023 on which late payment surcharge was levied @ 1.5% per month and is continued to be levied for the last four months and is continued to be levied even now. The late payment surcharge must be rolled back and refunded to the complainant to the extent that has been charged in the bills till the final overhauling. As per procedure the respondents were required to reflect the said disputed amount in the column provided in the bill for such disputed amounts and should have frozen it until the final outcome of the dispute. Despite repeated written reminders, the procedure was not followed making the reconciliation more and more complicated.

**Subsequent Revision of contract demand,**

10. The Complainant submits that the complainant once again troubled with the demand notice, for his own safety applied again for permanent reduction of contract demand on 21.01.2023 to 400 kVA and paid the processing fee of Rs. 8250/-. This time also the process of revision was not completed within the statutory period of one month and it took 3 months during which the bills were issued on 750 kVA contract demand, thus again overcharging. During this period the excess demand charges were charged in excess of 500 kVA (later 400 kVA), for which the complainant is entitled for refund.

**Non-implementation of the orders passed by Consumer Grievance Redressal Forum at Kasumpti:**

*Suphal*





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

Phone: 0177-2624525, email: [ombudsmanelectricity.2014@gmail.com](mailto:ombudsmanelectricity.2014@gmail.com)

11. The Complainant submits that the respondents have contravened the orders passed by CGRF granting partial relief to the complainant, which was to be implemented within 25 days but has not been implemented till date. Nor has the respondents assailed the orders passed by CGRF before any higher authority. This contravention calls for initiation of action u/s 142 in the shape of recommendation to the Commission for appropriate action.

**Automatic Resetting of contract demand:**

12. The Complainant submits that the Ld. Forum in Para 36 of the order, has wrongly interpreted the meaning of the amended para 3.10 after the 2<sup>nd</sup> Amendment. There is no mention of filing fresh application each year in the said amendment, nor is it anywhere written in the amendment that it will be applicable to past revisions which were being continued.
13. 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:

*"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."*

14. The Complainant submits 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.
15. The Complainant submits that it is also proven by the demand notice dated 08.03.2021, wherein the respondents had given relief of six months in a year, while calculating the arrears. 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.
16. The Complainant submits that the internal procedural instructions issued by the Chief Engineer (Comm.) on 25.10.2018 (**Annexure C6**) after the notification of the 2<sup>nd</sup> 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. 4<sup>th</sup>, 5<sup>th</sup> and 6<sup>th</sup> month. As per revised clause 3.10(a), if a consumer does not revise CD then after 6<sup>th</sup> month the billing shall be done on the basis of Original Sanctioned Contract Demand only."*

The instruction merely talks of billing but not about revision of contract demand, which stays untouched.



*Purhal*





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

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.”*

**Retrospective Application of the amendment:**

17. The Complainant submits that the Forum’s view on retrospectivity of the whole issue is summed up below. 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 2<sup>nd</sup> 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 the complainant, which the CGRF did not address, but have derived a different meaning of retrospectivity in the matter. The complainant 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.

18. The Complainant submits that 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*
- (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.”*

19. The Complainant submits that the 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 the rights of the complainant as the 2<sup>nd</sup> amendment cannot affect the right that was available to the complainant before the new enactment.

**Delayed action on the part of the respondents:**

20. The Complainant submits that the Ld. Forum has observed that the complainant 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 2<sup>nd</sup> 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:

- 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?



*Surpal*





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

Phone: 0177-2624525, email: [ombudsmanelectricity.2014@gmail.com](mailto:ombudsmanelectricity.2014@gmail.com)

- 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?

The Ld. Forum has erred in observing that the complainant was not vigilant, whereas the complainant was of the clear view that the amended provisions were not applicable on him as has been explained in foregoing paras 2.1 and 2.2.

**Notice of change:**

21. The Complainant submits that even if the respondents' intentions based on their interpretation of the 2<sup>nd</sup> 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 the complainant about the fate of facility that they were availing before such amendment, which would have provided an opportunity to the complainant to set his house in order in view of the interpretation of the 2<sup>nd</sup> 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."*

22. The Complainant submits 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 2<sup>nd</sup> amendment does not terminate the already existing applications for temporary reduction:**

23. 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 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:**

24. The Complainant submits that even if the entire version of the interpretation of the respondents is considered lawful, the delay has cast additional liability on the complainant. Had the first bill after 01.04.2019 issued as per their interpretation, the complainant 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 the complainant carried out after the issuance of demand notices could have been carried out much earlier, immediately after 01.04.2019. The complainants 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.



*Ruphal*





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

Phone: 0177-2624525, email: [ombudsmanelectricity.2014@gmail.com](mailto:ombudsmanelectricity.2014@gmail.com)

**Prayer**

25. The Complainant submits that in view of above the complaint prays as below:

- a) To quash and set aside the orders dated 24.05.2023 passed in Complaints No. 1421/4/22/37 as the same are contrary to the provisions of the law, while accepting the order only to the extent of the relief allowed to the complainant;
- b) To quash the demand notice 16.11.2022 issued by the respondents in totality;
- 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 16.11.2022;
- 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 direct the respondents to refund the amount of Rs. 11,25,000/- overcharged in demand charges during year 2012 to 2014 along with interest;
- f) To direct the respondents to pay penalty/ compensation as per Section 43(3) read with HPERC (Standards of Performance) Regulations, 2010
- g) To pass orders against the respondents for their conduct in respect of delayed action in implementing the provisions of the 2<sup>nd</sup> amendment.
- h) 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;
- i) To direct the respondents to compensate the complainant towards cost of the complaint amounting to Rs. 2,00,000/-.
- j) To Call for the record of the case.
- k) 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- Written submission for updating the compliance and pending matters of dispute in terms of interim orders dated 28.09.2023**

26. The Complainant submits that the complainant had approached the Ld. CGRF vide the complaint no. 1421/4/22/37. The complainant prayed for the following reliefs:

- a) To quash the demand notices dated 16.11.2022 (**Annexure C3**) for Rs. 28,35,000/-;
- b) To direct the respondents to refund the amount of Rs. 11,25,000/- overcharged in demand charges during year 2012 to 2014 along with interest;
- c) To direct the respondents to pay penalty/ compensation as per Section 43(3) read with HPERC (Standards of Performance) Regulations, 2010
- d) 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;
- e). 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.

27. The Complainant submits that the Ld. CGRF only granted partial relief in terms of para a) of the Prayer before it, while the rest of the reliefs sought by the complainant were not allowed or not dealt by the Ld. CGRF. While the Ld. CGRF in para 30 of its orders acknowledged and upheld the fact that the complainant had applied for permanent reduction of contract



*Ruppal*





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

Phone: 0177-2624525, email: [ombudsmanelectricity.2014@gmail.com](mailto:ombudsmanelectricity.2014@gmail.com)

- demand vide application dated 27.07.2012, the respondents were directed to consider the permanently reduced contract demand of 500 kVA instead of initially sanctioned contract demand of 750 kVA for the purpose of the demand notice for the period after 01.04.2019.
28. The Complainant submits that the respondents did not however, revised the demand notice or overhauled the account in compliance of the orders passed by the Ld. Forum. The complainant within the allowed time frame filed a representation before the Hon'ble Ombudsman for seeking further relief that was not allowed by the Ld. Forum, even seeking the implementation to the extent the relief was allowed by the Ld. CGRF.
  29. The Complainant submits that during the course of the proceedings, the respondents complied to the extent of relief ordered by the Ld. Forum by reversing / adjusting the disputed amount which stood charged in the electricity bills issued to the complainant since the issuance of the demand notice. The overhauling was carried out in the bill dated 06.09.2023 (**Annexure C8**), which was issued for Rs. 3,22,757/-, which also included consumption bill for the last month.
  30. The Complainant submits that the complainant paid the said bill dated 05.09.2023 in totality after the due date of the bill on 25.09.2023 vide online mode and the receipt issued by the billing system is placed at **Annexure C9**. Thus, after this the issue of the overhauling of the demand notice regarding additional demand charges leviable w.e.f. 01.04.2019 stood complied.
  31. The Complainant submits that the complainant accepts that the relief as sought in paras a) to d) of the prayer in the relief prayed in the representation lying before the Hon'ble Ombudsman stands resolved and settled in totality, which are related with the prayer in para a) of prayer before the Ld. CGRF. The relief as prayed by the complainant in para e) to i) still remain to be adjudicated by the Hon'ble Ombudsman. In para e) of the prayer the complainant has demanded refund of Rs. 11,25,000/- along with interest, which was overcharged by the respondents by delaying the load sanction application for permanent reduction from 750 kVA to 500 kVA during the years 2012 to 2014 in the shape of excess demand charges as has been shown in the Annexure C2 of the complaint filed before the Ld. CGRF.
  32. The Complainant submits that another major monetary relief sought by the complainant in Para f) of the prayer in the representation is in terms of penalty/ compensation in terms of the HPERC (Standards of Performance) Regulations, 2010 read with section 43(3) of the Electricity Act, 2003.
  33. The Complainant submits that the relief prayed for in paras g), h) and i) of the prayer in the representation also remain to be adjudicated by the Hon'ble Ombudsman.
  34. The Complainant submits that in view of above, the complainant prays that further proceedings may be taken up on the matters remaining to be adjudicated which still stand unresolved/ unsettled.

**C- The Respondent's Submission:**

1. The final hearing was conducted on dt. 30.11.2023. However, in the absence of reply, awaited from Respondents, it was decided with mutual consensus of both the parties that since the contentions of averments shall remain same as already stands submitted before Consumer Grievance Redressal Forum at Kasumpti during proceedings in complaint No. 1421/4/22/37 & order dated 24.05.2023 in the said matter, whether submissions by the Complainant or subsequent reply by the Respondents or rejoinder whatsoever, may be



*Pushpal*





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

Phone: 0177-2624525, email: [ombudsmanelectricity.2014@gmail.com](mailto:ombudsmanelectricity.2014@gmail.com)

considered for the purpose of arguments and closing of proceedings in the instant case. This court agreed with the view points and consensus of both the parties on this account to avoid further delay in the matter. The arguments thereafter were conducted as per schedule and concluded.

2. For the sake of brevity, the same is not reproduced and para 16to19 under item "G-Consumer Grievance Redressal Forum Order No." below may be referred to.
3. However, instead of submission of reply, the Respondent (Sr. Executive Engineer, Electrical Division, HPSEBL, Parwanoo) submitted with this Appellate Forum through letter dt. 22.11.2023 an affidavit on the action taken for refunding the amount as contended and withdrawal of subsequent Demand Notice thereof. These documents towards step taken by the Respondent Board on legitimate settlement and construing as response of Respondent, were also placed on record for discussions during final arguments on dt. 30.11.2023.

**D- The Complainant's written Arguments:**

The Complainant did not submit any written arguments instead preferred oral arguments.

**E- The Respondent's written Arguments:**

The Respondent also did not submit any written arguments instead preferred oral arguments.

**F- The Arguments of both during proceedings:**

1. The final hearing was conducted on dt. 30.11.2023. However, in the absence of reply, awaited from Respondents, it was decided during arguments with mutual consensus of both the parties that since the contentions of averments shall remain same as already stands submitted before Consumer Grievance Redressal Forum at Kasumpti during proceedings in complaint No. 1421/4/22/37 & order dated 24.05.2023 in the said matter, whether submissions by the Complainant or subsequent reply by the Respondents or rejoinder whatsoever, may be considered for the purpose of arguments and closing of proceedings in the instant case. This court agreed with the view points and consensus of both the parties on this account to avoid further delay in the matter. The arguments thereafter were conducted as per schedule and concluded.
2. For the sake of brevity, the same is not reproduced and para 16to19 under item "G-Consumer Grievance Redressal Forum Order No." below may be referred to.
3. However, instead of submission of reply, the Respondent (Sr. Executive Engineer, Electrical Division, HPSEBL, Parwanoo) submitted with this Appellate Forum through letter dt. 22.11.2023 an affidavit in this regard, the relevant extract is reproduced as under:

***"Affidavit***

***Subject: - Affidavit in Complainant No. 16/2023 titled M/S Swastwik Industries Vs HPSEBL.***

***" It is stated that as per the orders of CGRF dt.24.05.23in complainant No. 1421/4/22/37 titled M/S Swastwik Industries Vs HPSEBL, the approval and legal opinion to implement the orders from higher authorities was sought and as per the approval Executive Director (Pers.) HPSEBL Shimla bearing No. 1537-39 dt.19.06.2023, to implement the orders, the account bearing ID No.100012000705 is overhauled w.e.f Dec.12(Calculation Sheet attached) and accordingly refund of***



*Ruphal*





*6,75000/- has been given to the consumer in the bill of the month 10/2023 vide sundry item No.442/76/47.*

*The Demand Notice issued also stands withdrawn and the orders of Ld. CGRF are implemented in letter and spirit.*

*Deponent"*

4. During the course of final arguments on dt. 30.11.2023, the above documents were placed on record and discussed with both the parties. The representative for Complainant after going through the Calculation Sheet attached with the affidavit, was satisfied on the action of appending refund as mentioned above in the affidavit and subsequent withdrawal of Demand Notice in compliance to CGRF Order dt.24.05.23 in complainant No. 1421/4/22/37 in the said matter and agreed in the open court on all contentions settled except for the interest part on the refunded amount.
5. The counsel for Respondent on the above contentions of Complainant on refund of interest part, sought sometime to think over and on the prayer, this court allowed till 06.12.2023 for submissions before issuance of final order with a condition that on non-receipt of any communication by 06.12.2023 with this Appellate shall be construed as non-submissions and final order shall be issued thereof. The arguments were concluded except for above and orders reserved. However, since this court did not receive any written averments till 06.12.2023, proceeded for issuance of final order thereafter. Hence, the final order issued on 12.12.2023.

**G- Consumer Grievance Redressal Forum Order No. 1421/4/22/37 dt.24.05.2023**

**BRIEF FACTS OF THE CASE –**

1. Complaint has been filed under regulations 16, 17 and 18 of the HPERC (Consumer Grievances Redressal Forum and Ombudsman) Regulations, 2013;
2. The Complainant M/s Swastik Industries, Plot No 41-42, Sector 1, Industrial Area, Parwanoo, District Solan (HP)-173220, bearing consumer ID 100012000705 is a Large Industrial Power Supply (LIPS – HT) category consumer of the Respondent HPSEBL;
3. On 30.03.2010, the Original or Permanent sanctioned Contract Demand of the Complainant was 750 kVA, which was reduced by the Complainant to 500 kVA on 12.10.2012 (Annexure C1 Colly);
4. Thereafter in September 2014, the Complainant temporarily revised its Contract Demand (Temporary Contract Demand) to 450 kVA (Annexure C3);
5. The instant matter is regarding raising of monetary demand (in Rs) by the Respondent HPSEBL to the Complainant vide Demand Notice dated 16.11.2022 (Annexure C3) for the period of 42 months from May 2019 to October 2022, pursuant to HP Electricity Supply Code (Second Amendment) Regulations, 2018 which was notified on 31.07.2018 and which became effective from 01.04.2019 (here-in-after referred to as Supply Code 2nd Amendment, 2018 or Supply Code 2nd Amendment).

**COMPLAINANT –**

6. Per Complainant, its Contract Demand was reduced from 750 kVA to 500 kVA in the year 2012. This was done by way of Application and Agreement Form (Annexure C1

*Ruphal*





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

Phone: 0177-2624525, email: [ombudsmanelectricity.2014@gmail.com](mailto:ombudsmanelectricity.2014@gmail.com)

- Colly) and processing fees of Rs 6250/= calculated at the rate of Rs 25/= per KVA and which was deposited on 12.10.2012;
7. However, Respondents continued to issue bills from November 2012 to August 2014 on the basis of 750 kVA, resulting in excess charges of Rs 11,25,000/= (Annexure C2). The Complainant is aggrieved by the action of the Respondent, due to which huge liability has been determined on the Complainant;
  8. This action of the Respondent is against Section 43(1) of the Electricity Act, 2003 and in contravention to the provisions of HPERC (Standards of Performance) Regulations, 2010;
  9. The Complainant is thus liable to be compensated in accordance with HPERC (Standards of Performance) Regulations, 2010 and also deserves refund of ibid excess charges of Rs 11,25,000/= (Annexure C2) recovered from it
  10. On 16.11.2022, the Respondent sent a notice (Annexure C3) to the Complainant, demanding arrears of Rs. 28,35,000/- on account of demand charges stating that the same were to be levied on the basis of 750 kVA rather than 450 kVA calculated since 01.04.2019;
  11. The Complainant contends that the impugned Notice if at all to be issued, should have been done considering Contract Demand of 500 kVA and not 750 kVA;
  12. The Complainant further contends by way of arguments and questions to the Forum –
  13. whether Code 3.10 of ibid Supply Code 2nd Amendment, 2018 notified on 31.07.2018 is applicable to reduction of contract demand prior to the date of said amendment and that the amendment no-where states that consumers who were already being billed under the temporarily reduced contract demand prior to the notification of 2nd Amendment shall fall in the purview of the new mechanism. It is beyond doubt that the said amendment would be affected on the future applications for temporary revision of the contract demand. The Complainant's Contract Demand for billing purposes was reduced temporarily in the year 2014, when the rules permitted such reduction to continue for an indefinite period. The said amendment cannot be applied in the present case where the Contract Demand was reduced many years before the amendment came into existence. At least a notice to such change should have been given well in time by the Respondents rather than later claiming the arrears;
  14. whether the 2nd amendment in reference to clause 3.10 was implemented by the Respondents as per intentions of amendment in manner that it was notified—The Note in the amendment has totally been ignored. The Respondents during this period of eight months should have issued notices to such consumers who were likely to be affected by the changed provisions to act well in time in accordance with the changed provision. The Respondents inaction has now resulted in the financial liability that has been transferred to the Complainant. The Respondents should have raised bill on the basis of full sanctioned Contract Demand in the month immediately falling after the expiry of the six months period that is allowed by the amended regulations. In other words, six months from the effective date (01.04.2019) of the said amended provision, which expired on 30.09.2019. The subsequent bill issued for the month of October 2019, should have been issued on the basis of sanctioned Contract Demand which in this case was to be 500KVA. The Complainant would have noticed the same and would have taken adequate steps so that the arrears do not get accumulated and



*Suphal*





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

Phone: 0177-2624525, email: [ombudsmanelectricity.2014@gmail.com](mailto:ombudsmanelectricity.2014@gmail.com)

the Complainant would have permanently reduced the Contract Demand from the following month (Nov 2019) onwards, which was well with the rights of the Complainant. The Respondents choose to remain silent in order to financially benefit from the amended provisions at the cost of the Complainant and thereafter issued demand notices for the arrears. The Respondents thus do not deserve to recover such arrears, as they had not issued proper bills, which has resulted in financial loss to the Complainant. The Complainant cannot go backwards in time to apply for permanent reduction retrospectively;

15. The Complainant has sought relief in terms of quashing of Demand Notice dated 16.11.2022 (Annexure C3) for Rs 28,35,000/= and for refunding overcharged amount of Rs 11,25,000/= from year 2012 to 2014 and compensation in accordance with section 43(3) read with HPERC (Standards of Performance) Regulations, 2010.

**RESPONDENT –**

16. On the other hand, the Respondent HPSEBL in its Reply has submitted that the monetary demand raised vide Demand Notice has rightly been done which is in accordance with the Code 3.10 of Himachal Pradesh Electricity Supply Code (Second Amendment) Regulations, 2018 notified on 31.07.2018 which came into effect from 01.04.2019. In the Regulations word “financial year” is used by the Hon’ble Commission and it is without any dispute that financial year is from 01st April to 31st March in a year;
17. That alleged refund for the year 2012 to 2014 is directly hit by Regulation 19(c) of HPERC (Consumer Grievances Redressal Forum and Ombudsman) Regulations, 2013 and is liable to be rejected;
18. That 2nd Amendment to Supply Code was done by the Hon’ble HPERC was done after previous publication, calling objections from stake holders and after public hearing. The Amendment was duly published in the official gazette of Himachal Pradesh and thus Complainant cannot be allowed to claim ignorance;
19. That the impugned action of the Respondent is valid and legal, in terms of mandated provisions of the Supply Code and therefore the complaint being devoid of merits is liable to be dismissed.

**ORDER-**

20. 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 alongwith pleadings of the parties. We have heard the parties at length. The considered opinion of the Forum has been gathered after examining and analysing fair facts, evidences and correspondence placed on record and arguments adduced by both the parties;
21. At the outset, this Forum finds that the Complainant has raised multiple grievances by way of the instant complaint—
- (a) One grievance of Complainant is with regard to refund of overcharged amount of Rs 11,25,000/= from November 2012 to August 2014 (Annexure C2) due to wrong consideration of Contract Demand (in kVA or MVA) and for compensation in lieu







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

- thereof, in accordance with section 43(3) read with HPERC (Standards of Performance) Regulations, 2010;
- (b) The second grievance of Complainant is against wrongful consideration of original permanent Contract Demand of 750 kVA by the Respondent at the time of applying the code 3.10 of the Supply Code (Second Amendment) Regulations, 2018, notified on 31.07.2018 (effective 01.04.2019), for the purpose of raising the impugned monetary demand vide Demand Notice dated 16.11.2022 (Annexure C3), especially when the Complainant had reduced the Contract Demand to 500 kVA on 12.10.2012;
- (c) The third grievance of Complainant is mainly in terms of non-applicability of ibid code 3.10 of the Supply Code to it.
22. The Forum now takes up the first grievance of Complainant with regard to refund of overcharged amount of Rs 11,25,000/= --
23. On the ibid grievance, the Respondent has raised objection on grounds that such is hit by regulation 19(c) of HPERC (Consumer Grievances Redressal Forum and Ombudsman) Regulations, 2013. On the other hand, in its Rejoinder, the Complainant has defended the grievance against ibid regulation 19(c);
24. Forum observes that in respect of the ibid grievance for refund of overcharged amount of Rs 11,25,000/=, the cause of action to the Complainant first arose in November 2012 and thereafter continued up to August 2014 when electricity bills were being raised to the Complainant by the Respondent;
25. On examination of the ibid regulation 19(c), the Forum finds that the aforementioned grievance for refund of overcharged amount of Rs 11,25,000/= from November 2012 to August 2014 (Annexure C2) and for compensation in lieu thereof, has been submitted by the Complainant after as many as 10 years when the cause of action first arose to the Complainant. The Forum also does not find any merit what-so-ever in the arguments given by the Complainant in its Rejoinder, that because impugned Demand Notice has been issued on basis of Contract Demand of 750 kVA, thus the Complaint is not hit by limitation;
26. The Forum holds without any iota of doubt that the ibid grievance raised by the Complainant for refund of overcharged amount of Rs 11,25,000/= from November 2012 to August 2014 (Annexure C2) is clearly hit by limitation period of two years in terms of ibid regulation 19(c) of HPERC (Consumer Grievances Redressal Forum and Ombudsman) Regulations, 2013 and therefore the grievance is not maintainable. The first grievance raised by the Complainant is decided accordingly.
27. The Forum now takes up the second grievance of Complainant on the wrongful consideration of original permanent Contract Demand of 750 kVA --
28. Forum observes that in order to decide the grievance, it is imperative to decide as to what is the Permanent Contract Demand of the Complainant as on 01.04.2019, the date from which Supply Code 2nd amendment notified on 31.07.2018, became effective;
29. On examination of the HP Supply Code, 2009, the Forum finds that the concept of Temporary Contract Demand was first introduced by way of first amendment to Supply Code vide HP Electricity Supply Code (First Amendment) Regulations, 2014, notified by the HP Electricity Regulatory Commission on 11.06.2014. Thus, it becomes evident that before the notification of this amendment, the Contract Demand and its revisions were all of Permanent nature;

*Pragat*





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

Phone: 0177-2624525, email: [ombudsmanelectricity.2014@gmail.com](mailto:ombudsmanelectricity.2014@gmail.com)

30. As observed from record, on 30.03.2010, the Original or Permanent sanctioned Contract Demand of the Complainant was 750 kVA, which was reduced by the Complainant to 500 kVA on 12.10.2012 (Annexure C1 Colly). After examination of record and the foregoing exposition of provisions of Regulations / Code, the Forum holds that the revised Contract Demand of 500 kVA done by Complainant on 12.10.2012 is of permanent nature or Permanent Contract Demand and the Contract Demand of 450 kVA effected in September 2014 is of temporary nature or Temporary Contract Demand. Thus, the Forum is in agreement with the Complainant that the Permanent Contract Demand of the Complainant on 01.04.2019 is 500 kVA and not 750 kVA and therefore the Demand of the Complainant has to be worked out on the basis of 500kVA;
31. Now the Forum proceeds to delve on the third grievance of Complainant which is mainly in terms of non-applicability of ibid code 3.10 of the Supply Code to it —
32. The Forum finds 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 2014 therefore, the ibid Supply Code 2nd Amendment is not applicable to it 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. Forum also finds that a self-contradictory argument has further been placed forth by the Complainant that a six months period is allowed by the Supply Code Amendment Regulations, 2018 notified on 31.07.2018 and thus Demand has to be calculated keeping this in mind;
33. This Forum observes 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.
34. This Forum, before proceeding with the third grievance of the Complainant, 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 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: -



*Curhal*





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

**Quote**

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

**“3.10 Temporary revision of contract demand. –**

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

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



*Suphal*





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

Phone: 0177-2624525, email: [ombudsmanelectricity.2014@gmail.com](mailto:ombudsmanelectricity.2014@gmail.com)

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**

35. Before proceeding to determine the question of applicability or non-applicability of Supply Code 2nd Amendment, this Forum also considers it pertinent to briefly delve into the working of the Contract Demand (in KVA/ or MVA). It is apparent that the Contract Demand is a provision of the Electricity Supply Code and the Tariff Orders. It is a Demand (in KVA/ or MVA) contracted by the consumer at the time of his original application for connection, which is also subjected to permissible revisions during the life of the connection strictly in accordance with the provisions of the Supply Code, 2009. This Contract Demand is applied for, by the consumer and sanctioned by the licensee, inter-alia with the underlying purposes of determining the Standard Supply Voltages at the time of connection, for billing of the consumer etc. The original Contract Demand is of ‘Permanent’ nature and the subsequent revisions at the option of the consumer may be of ‘Permanent’ or of ‘Temporary’ nature which are regulated in accordance with the provisions of the Supply Code and further applied to billing etc 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;
36. 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



*Signature*





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

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;

37. 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 re-applied by the consumer. In absence of such reapplication, this monetary demand automatically gets based upon Permanent sanctioned Contract Demand which was last applied. This process shall follow for each / new financial year;
38. In view of above amended provisions and observations, this Forum arrives on the logical conclusion that question of retrospective application of Supply Code 2nd Amendment 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;
39. 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



*Pushpal*





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

Phone: 0177-2624525, email: [ombudsmanelectricity.2014@gmail.com](mailto:ombudsmanelectricity.2014@gmail.com)

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

40. Now coming to the instant complaint, it is observed by this Forum that the Complainant had temporarily revised his Contract Demand to 450 kVA (Temporary Contract Demand) in the year 2014 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 impugned monetary demand to the Complainant vide Demand Notice (Annexure C-3) on account of Supply Code 2nd Amendment, 2018, only for the periods (May 2019 to October 2022) of electricity consumption occurring after 01.04.2019 based on the Permanent Contract Demand. 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 not applicable to it, is wrong, far-fetched and not tenable in face of express provisions of the Supply Code 2nd Amendment *ibid*. The Forum also does not find any retrospective application of the Supply Code / Regulations. Thus, the contention of the Complainant that the Supply Code 2nd Amendment is not applicable to him is outrightly rejected by the Forum as being grossly misplaced and wrong;
41. In accordance with the Supply Code 2nd Amendment, the end of the financial year is signified by the date of 31st March of the year and this is not denied by the Complainant. On this end date the 'Temporary Contract Demand' as existing, shall deem to expire or cease to exist. Thus, from the start of the next financial year as being 01st April, which is also not denied by the Complainant, the Complainant shall be expected to apply afresh for the Temporary Contract Demand (in KVA or MVA), if it so intends. In the instant complaint, the Complainant had failed to apply afresh for the 'Temporary Contract Demand' from 01.04.2019 onwards and thus was liable to be billed on the basis of Permanent Contract Demand from 01.04.2019 onwards;
42. Therefore, it can be safely concluded that the Supply Code 2nd Amendment, 2018 by the Respondent HPSEBL is beyond doubt applicable to the Complainant and it is its own fault of not reapplying for a fresh 'Temporary Contract Demand beyond 01.04.2019 or after the start of the financial year. Because the Complainant failed to re-apply afresh for Temporary Contract Demand beyond 01.04.2019 or after the start of the financial year thus, any benefit of six months as is being argued by the Complainant, cannot and shall also not become available to the Complainant;
43. The Complainant has further contested that the *ibid* Supply Code 2nd Amendment was not implemented as per Note in the Amendment. The Forum rejects this contention of the Complainant for the sole reason that such Note is in terms of instructions to field units by the Respondent and not to the consumer Complainant;
44. The Forum also finds the arguments of Complainant as untenable, that the Respondent should have issued Notices to the consumers for the revision of Contract Demand. It is a settled proposition that ignorance of law is no excuse. The fact is undisputed that change of law through amendments is done after following due process. The present 2nd Amendment, 2018 to Supply Code has been effected by the HPERC after inviting public/ objections etc from all stake holders. The said amendments after enactment were notified and published in official gazette for the knowledge of public/stake holders at large. It is safely presumed and expected that all stake holders / public including the Complainant are well aware of the said amendment. Thus, there is no requirement of any prior notice to raise monetary demand (in

*Pushpal*



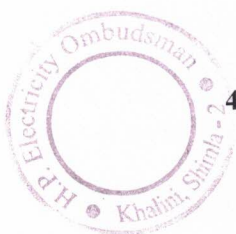


**HIMACHAL PRADESH ELECTRICITY OMBUDSMAN**  
**SHARMA SADAN, BEHIND KEONTAL COMPLEX, SHIMLA-171002**

Phone: 0177-2624525, email: [ombudsmanelectricity.2014@gmail.com](mailto:ombudsmanelectricity.2014@gmail.com)

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;

45. 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;
46. It is evident from the observations made here-in-above, that the instant grievance 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 impugned monetary demand by the Respondent HPSEBL;
47. This Forum does not find 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. 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;
48. The Forum from examination of record, further finds that the monetary demand was raised by the Respondent only for the period of electricity consumption from May 2019 to October 2022 and not for any period before 01.04.2019. Further, when the impugned Demand Notice dated 16.11.2022 (Annexure C-3), 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 May 2019 to October 2022 (42 months) and not for any period prior to 01.04.2019. Accordingly, it becomes amply evident that there is no retrospective application of Regulations / Code. Thus, on this score alone the complaint deserves to be dismissed, being argumentative and without any legal basis, as it cannot be held that there is any retrospective application, what-so-ever, of ibid 2nd Amendment;
49. However, on examination of ibid impugned Demand Notice dated 16.11.2022, the Forum finds that the basis of the monetary demand raised by the Respondent is the original Permanent Contract Demand of 750 kVA and not the revised Contract Demand of 500 kVA.



*Rupesh*





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

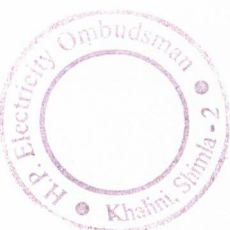
Phone: 0177-2624525, email: [ombudsmanelectricity.2014@gmail.com](mailto:ombudsmanelectricity.2014@gmail.com)

As has been observed by the Forum in Paras supra, the Contract Demand of 500 kVA revised by the Complainant on 12.10.2012 is of Permanent nature and it is this Contract Demand of 500 kVA which has to be the basis for raising the monetary demand in terms of code 3.10 of the Supply Code (Second Amendment) Regulations, 2018. Thus, on this count alone, the Forum agrees with the Complainant that the impugned Demand Notice dated 16.11.2022 is wrong because it is based upon the Contract Demand of 750 kVA, whereas it should have been based upon the Contract Demand of 500 kVA;

50. In view of the foregoing discussions, the Forum does not find any illegality in the Demand Notice dated 16.11.2022 (Annexure C-3) raised by the Respondent HPSEBL which this Forum finds as having been issued in terms of the amended provisions of the Supply Code, 2009 i.e Code 3.10 notified on 01.07.2018 and effective from 01.04.2019. The Forum further holds that no benefit of six (6) months as provided in Code 3.10 of the Supply Code Amendment Regulations, is available to the Complainant till the time the Complainant applied afresh for the Temporary Contract Demand, as this provision of regulations is pivoted upon the Temporary Contract Demand which in this case was not re-applied timely by the Complainant;
51. However, the Forum does find the ibid impugned monetary demand (Annexure C3) to have been wrongly raised by the Respondent based on the Contract Demand of 750 kVA. The Forum holds that the monetary Demand has to be raised by the Respondent against Contracted Demand of 500 kVA instead of 750 kVA. To this extent the Demand Notice (Annexure C-3) is set aside with directions to the Respondent to correct and raise revised Demand Notice based upon 500 kVA Contract Demand. The Respondent is directed to raise revised Demand Notice to the Complainant within 10 days of this Order, which the Complainant shall pay within 15 days of the said revised Demand Notice. The second and the third grievances raised by the Complainant are collectively decided accordingly.
52. In aforesaid terms, the complaint is decided on merits and is partially allowed and is disposed of accordingly.
53. Parties are left to bear their own costs.
54. Order is announced before the parties present today on 24.05.2023 at Shimla in open Forum. Certified copies of this Order be supplied to the parties. The complaint along with this Order be consigned to record room for safe custody.

**H-Analysis of the Complaint:**

1. The case file bearing Complaint No. 1421/4/22/37 and orders passed on dated 24/05/2023. by the Consumer Grievance Redressal Forum (CGRF) Kasumpti, Shimla-171009 have been requisitioned and gone through.
2. The submissions made by both the parties during arguments have also been incorporated in this order to have composite view of the entire case.
3. The documents on record, arguments made by both the parties have also been gone through.
4. The relevant Acts, Supply Codes, Manual of Instructions Part-1 and relevant supply conditions have been referred for the sake of clarity.
5. The Complainant M/s Swastik Industries, Plot No 41-42, Sector 1, Industrial Area, Parwanoo, District Solan (HP)-173220, bearing consumer ID 100012000705 is a Large Industrial Power Supply (LIPS – HT) category consumer of the Respondent HPSEBL;
6. On 30.03.2010, the Original or Permanent sanctioned Contract Demand of the Complainant was 750 kVA, which was reduced by the Complainant to 500 kVA on 12.10.2012.



*Suphal*





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

Phone: 0177-2624525, email: [ombudsmanelectricity.2014@gmail.com](mailto:ombudsmanelectricity.2014@gmail.com)

7. Thereafter in September 2014, the Complainant temporarily revised its Contract Demand (Temporary Contract Demand) to 450 kVA.
8. The instant matter is regarding raising of monetary demand (in Rs) by the Respondent HPSEBL to the Complainant vide Demand Notice dated 16.11.2022 for the period of 33 months from 01.04.2019 to December, 2021, pursuant to HP Electricity Supply Code (Second Amendment) Regulations, 2018 which was notified on 31.07.2018 and which became effective from 01.04.2019 (here-in-after referred to as Supply Code 2nd Amendment, 2018 or Supply Code 2nd Amendment).
9. After going through the said averments of the Complainant in details as well as contentions in depth, listening to the Arguments of both the parties, the letter dt. 22.11.2023 from Sr. Executive Engineer, Electrical Divn. Parwanoo alongwith affidavit on the action taken for refunding the differential amount as contended and withdrawal of subsequent Demand Notice thereof, reply of Respondents submitted before CGRF, rejoinder of Complainant submitted before CGRF, opinion of CGRF in order dt. 24.05.2023 and relevant clauses of supply code along with communique dt. 25.10.2018 of Chief Engineer (Commercial) Shimla on the Internal Procedural Instructions issued after the notification of the 2nd amendment of clause 3.10(a), in the considered opinion of this Appellate Forum, the Complainant has misconceived the essence of amended clause 3.10(a) of the supply code and could not fetch the exact contentions behind the 2<sup>nd</sup> amendment when read in conjunction with operative part of 1<sup>st</sup> amendment & the procedural instructions issued vide Chief Engineer (Comm.) letter dt. 25.10.2018.
10. While analysing the main moto behind the 2nd amendment of clause 3.10(a), this Appellate Forum first focuses on the specific directions and for the sake of legitimate lending of the contentions arising on account of misinterpretation, reproduces the relevant clauses as under:

**A. Himachal Pradesh Electricity Supply Code (First Amendment) Regulations, 2014 dated 11.06.2014 –**

- 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*



*Purhal*





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

Phone: 0177-2624525, email: [ombudsmanelectricity.2014@gmail.com](mailto:ombudsmanelectricity.2014@gmail.com)

*him upon the licensee through registered post or through courier service or is delivered by hand against signed receipt therefor;*

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

**B. Himachal Pradesh Electricity Supply Code (Second Amendment) Regulations, 2018 dated 31.07.2018 –**

clause 3.10. The following provisions under second amendment were inserted:

***“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.***

- C. Relevant to the instant case, Para 3 (c) of internal procedural instructions issued by the Chief Engineer (Comm.) on dt. 25.10.2018 after the notification of the 2nd amendment, is also reproduced as under:

3. *After three months, consumer shall have following three options:*

***“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.***

***In case consumer wishes to revise CD in 4<sup>th</sup> or 5<sup>th</sup> month he may do so but the said revision as per revised clause 3.10(a) shall be for two months in case CD is revised in 4<sup>th</sup> month and one-month in case revision is being done in 5<sup>th</sup> month, considering 1 month notice period for revision of CD. At the end of which billing shall be done on the basis of original Sanctioned Contract Demand only.”***

11. In due cognizance to the clause 3.10 (a) Supply Code (First Amendment) Regulations, 2014 dated 11.06.2014, (Second Amendment) Regulations, 2018 dated 31.07.2018 read with procedural instruction 3(c) issued by Chief Engineer Commercial vide letter dt. 25.10.2018 after the notification of the 2nd amendment to be effective from 01.04.2019 onwards, this Appellate Forum on the contentions of the Complainant, delves as under:

- a. The Complainant submits that the complainant is eligible for billing based on temporary revision for six months in continuity. The analysis on this contention reveals that the Complainant has misconstrued the true meaning of 2<sup>nd</sup> amendment which categorically envisages that the consumer shall not be eligible for temporary revision of Contract Demand to a value other than the full sanctioned contract



*Ruphal*





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

Phone: 0177-2624525, email: [ombudsmanelectricity.2014@gmail.com](mailto:ombudsmanelectricity.2014@gmail.com)

demand for a total period of more than six months in one financial year. Here, the quote "total period of more than six months in one financial year" has the hidden meaning which is quite apparent when clause 3.10 of (Second Amendment) Regulations, 2018 dated 31.07.2018 read with clause 3.10 (b) of (First Amendment) Regulations, 2014 dated 11.06.2014, clearly provides that one cannot revise Contract Demand for a total period of more than six months in one financial year with revision twice a year subject to the condition that the time gap between two successive revisions shall not be less than 3 months.

- b. This analysis further infers contrary and misconceived contentions of the Complainant on eligibility for billing, based on temporary revision for six months in continuity, that as an illustration in case the Complainant avails revision only for the last four months of the preceding Financial Year, this will not make him eligible for availing benefit of remaining two months by spilling over to the next Financial year, as the (Second Amendment) Regulations, 2018 of clause 3.10 under any circumstances, restricts/confines benefit of revision specifically to the Financial Year in which such revision was resorted to. Hence, the averments made are not viable in the instant case.
- c. The Complainant's apprehension on the findings of Forum on wrong interpretation of the meaning of amended para 3.10 after the 2nd Amendment that there is no mention of filing fresh application each year in the said amendment, nor is it anywhere written in the amendment that it will be applicable to past revisions which were being continued, is again misconstrued by the Complainant as they are referring the respective amendments in isolation whereas, this Appellate Forum is of the considered opinion that if the clause 3.10 (a) Supply Code (First Amendment) Regulations, 2014 dated 11.06.2014, (Second Amendment) Regulations, 2018 dated 31.07.2018 and the procedural instruction 3(c) issued by Chief Engineer Commercial vide letter dt. 25.10.2018 after the notification of the 2nd amendment to be effective from 01.04.2019 onward are read in totality, clearly reveals that all revisions confine only to the preceding Financial Year and after the expiry of the option for the months availed in that Financial Year if one intends to continue with the same revision or further revision, a fresh Application shall be entertained only if a few months remain balance out of six months in that Financial or otherwise, henceforth, the billing shall start with the original sanctioned Contract Demand as per provisions, unless the fresh application is submitted in the next Financial Year for availing any revision on Contract Demand intended to.
- d. After going through the procedural instruction No.3 imparted by CE (Comm.) vide above referred letter dt. 25.10.2018, it is clearly mentioned that after three months, consumer can exercise three options, where 3(c) is relevant in the instant case and transparently provides that the consumer has 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.
- e. In case consumer wishes to revise CD in 4<sup>th</sup> or 5<sup>th</sup> month he may do so but the said revision as per revised clause 3.10(a) shall be for two months in case CD is revised in 4<sup>th</sup> month and one-month in case revision is being done in 5<sup>th</sup> month, considering 1



*Pushpal*





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

Phone: 0177-2624525, email: [ombudsmanelectricity.2014@gmail.com](mailto:ombudsmanelectricity.2014@gmail.com)

month notice period for revision of CD. At the end of which billing shall be done on the basis of original Sanctioned Contract Demand only.

- f. After above analysis on these averments, it is amply clear without any doubt that these three months (option 4th, 5th and 6th month) are out of total six months of the option in respective Financial Years and does not allow to carryover to next Financial Year or continue in the same Financial Year once all six months get exhausted, even if months remain balance in that Financial year, as contended by the Complainant, rather automatically switches on to the sanctioned Contract demand as per 2<sup>nd</sup> amendment after expiry of the period of total six months in that Financial Year if not applied afresh.
- g. This Appellate Forum appreciates the detailed and concise analysis by CGRF on the interpretation of clause 3.10 of the 2<sup>nd</sup> amendment of the Supply Code and the same may also be considered as a part and parcel of the findings.
- h. This Appellate Forum after above analysis in an elaborate form also delved on the contentions of the Complainant in isolation and asserts that in consonance with above provisions, the Complainant due to misconception on interpretation of clause 3.10(a) in 2<sup>nd</sup> Amendment of the Supply code as well as procedural instruction issued by Chief Engineer Commercial vide letter dt. 25.10.2018, could not exercise the said provisions in judicious manners. However, such misconceptions have no excuse, when all Amendments are issued by the Hon'ble Commission after taking the detailed views of the stakeholders. This Appellate Forum agrees with the findings of CGRF on this account and the same may also be considered as part and parcel of the analysis of this Appellate Forum.
- i. While scrutiny of the averments in the process of analysis, this Appellate Forum observed that the Complainant applied for temporary revision of Contract Demand to the extent of 450KVA in September, 2014 and continued with same assumptions and did not apply afresh for continuity even after the notification of clause 3.10 (Second Amendment) Regulations, 2018 dated 31.07.2018 of Supply Code effected from 01.04.2019 which was Financial Year specific and resulted into contrary landing of averments against the spirit of the said amendment, inspite of the fact that the views of stakeholders are solicited before the notification of any new Regulations/Amendments by the Hon'ble Commission and ignorance does not hold good and construes untenable contentions.
- j. This Appellate Forum after analysing the facts of the case directs that due cognizance warrants on each end whether Complainant or Respondents while interpretation of new amendments take their way for implementation as it has been observed that neither of the parties bothered to show their awareness for implementation of clause 3.10 (a) Supply Code (Second Amendment) Regulations, 2018 and the procedural instructions issued by Chief Engineer Commercial vide letter dt. 25.10.2018 on this account. However, within the ambit of misconceptions, the course of justice cannot be ignored/injured.
- k. However, during the proceedings on the day of final hearing on dt. 30.11.2023, the affidavit submitted by the Respondent (Sr. Executive Engineer, Electrical Division, HPSEBL, Parwanoo through letter dt. 22.11.2023 was discussed at length, the relevant extract is reproduced as under:



*Rupnar*





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

Phone: 0177-2624525, email: [ombudsmanelectricity.2014@gmail.com](mailto:ombudsmanelectricity.2014@gmail.com)

*"Affidavit*

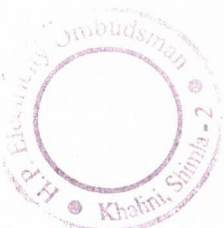
**Subject: - Affidavit in Complainant No. 16/2023 titled M/S Swastwik Industries Vs HPSEBL.**

*It is stated that as per the orders of CGRF dt.24.05.23 in complainant No. 1421/4/22/37 titled M/S Swastwik Industries Vs HPSEBL, the approval and legal opinion to implement the orders from higher authorities was sought and as per the approval Executive Director (Pers.) HPSEBL Shimla bearing No. 1537-39 dt.19.06.2023, to implement the orders, the account bearing ID No.100012000705 is overhauled w.e.f Dec.12 (Calculation Sheet attached) and accordingly refund of 6,75,000/- has been given to the consumer in the bill of the month 10/2023 vide sundry item No.442/76/47.*

*The Demand Notice issued also stands withdrawn and the orders of Ld. CGRF are implemented in letter and spirit."*

**Deponent"**

- l.** The representative for Complainant went through the Calculation Sheet attached with the affidavit and showed his satisfaction on the action of appending refund as mentioned above in the affidavit and subsequent withdrawal of Demand Notice in compliance to CGRF Order dt.24.05.23 in complainant No. 1421/4/22/37 in the said matter and agreed in the open court that all his contentions be considered settled except for the interest part on the refunded amount.
- m.** The counsel for Respondent on the above contentions of Complainant on refund of interest part, sought sometime to think over and on the prayer, this court allowed till 06.12.2023 for submissions before issuance of final order with a condition that on non-receipt of any communication by 06.12.2023 with this Appellate, shall be construed as non-submissions and final order shall be issued thereof. The arguments were concluded except for above and orders reserved.
- n.** From the above acceptance of contentions by the Complainant in the Court Room except for interest part, this Appellate Forum concludes that further digging on the submissions and relief sought is not warranted, hence proceeds for issuance of final order after expiry of 06.12.2023 thereof.
- o.** After exercising above provisions and amendments of relevant and prevalent Regulations, applicable in the instant case, in the considered opinion of this Appellate, it is inferred that the applicability of these Regulations is prospectively from the date of notification and not retrospectively. Hence, while resorting to settlement, the part of disputed period falling within the ambit of which Regulation (issued from time to time) may be considered. There is every possibility that one part of the period may fall within the preview of principal Regulation and the other part of period may fall within the scope of amendments to that principal Regulation. Accordingly, due cognizance must be given to the date of applicability, whether principal Regulation or subsequent amendments thereof.
- p.** This Appellate Forum is of the considered view that every case is governed under its own merits and statute and hence cannot be taken as, explores issues as under.



*Rupnar*





**I- Issues in Hand:**

**Issue No.1:**

Whether the Complainant is eligible for billing based on temporary revision for six months in the next Financial Year in continuity?

**Issue No.2:**

Whether the temporary revised Contract Demand automatically switches on to the Sanctioned Contract Demand as per 2<sup>nd</sup> amendment after the expiry of the period of total six months in that Financial Year?

**Issue No.3:**

Whether the Complainant has to submit fresh application after the expiry of each Financial Year.?

**J-Findings of the Issues:**

**Issue No.1:**

1. The Complainant submits that the complainant is eligible for billing based on temporary revision for six months in continuity, whereas contrary to the averments, clause 3.10(a) of (Second Amendment) Regulations, 2018 dated 31.07.2018 read with clause 3.10 (b) of (First Amendment) Regulations, 2014 dated 11.06.2014, clearly provides that one cannot revise Contract Demand for a total period of more than six months in one financial year with revision twice in a year subject to the condition that the time gap between two successive revisions shall not be less than 3 months.
2. This Appellate Forum while doing findings in consonance with the above provisions asserts that in case the Complainant avails revision only for the last four months of the preceding Financial Year, this will not make him eligible for availing benefit of remaining two months by spilling over to the next Financial year, as clause 3.10(a) of the (Second Amendment) Regulations, 2018 under any circumstances, restricts/confines benefit of revision specifically to that Financial Year in which such revision was sought unless he applies afresh.
3. This Appellate Forum while closing findings on this issue concludes that the Complainant has misconstrued the true meaning of 3.10(a) of the supply codes under 2<sup>nd</sup> amendment and could not fetch the exact contentions behind the 2<sup>nd</sup> amendment when read in conjunction with 1<sup>st</sup> amendment & the procedural instructions issued vide Chief Engineer (Comm.) letter dt.25.10.2018.

This closes the findings on Issue No.1

**Issue No.2:**

1. After giving findings on Issue-1, this Appellate Forum observed that in order to arrive at legitimate consensus in Issue-2, the procedural Instructions No. 3 imparted through letter dated 25.10.2018 by CE(Comm.) plays vital role which without any doubt provides that after three months, consumer can exercise three options, where 3(c) is relevant in the instant case and transparently provides that the consumer has 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.
2. The term as mentioned above "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.", without any doubt clearly indicates that it is mandatory for the consumer to revise or afresh his



*Suphal*





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

Phone: 0177-2624525, email: [ombudsmanelectricity.2014@gmail.com](mailto:ombudsmanelectricity.2014@gmail.com)

requisition or otherwise henceforth, the Original Contract Demand shall automatically switch on for billing.

3. This Appellate Forum after going through these instructions , gathers opinion without any doubt that these three months ( option 4th, 5th and 6th month) are out of total six months of the option in the respective Financial Years and does not allow to carryover to next Financial Year or continue in the same Financial Year, once all six month get exhausted, even if months remain balance in that Financial year , as contended by the Complainant in the instant case, rather automatically switches on to the sanctioned Contract demand as per 2<sup>nd</sup> amendment of the supply code read with instruction 3(c ) of above mentioned CE(Comm.) letter dt.25.10.2018, after the expiry of the period of total six months in that Financial Year .

This closes the findings on Issue No.2

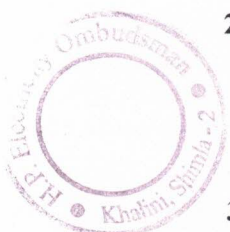
**Issue No.3:**

1. While closing findings on Issue-1to2, this Appellate Forum feels nourished that if the provisions as per the clause 3.10 (a) of Supply Code (First Amendment) Regulations, 2014 dated 11.06.2014, (Second Amendment) Regulations, 2018 dated 31.07.2018 and the procedural instruction 3(c) issued by Chief Engineer Commercial vide letter dt. 25.10.2018 after the notification of the 2nd amendment to be effective from 01.04.2019 onward, are read in totality, clearly reveals that all revisions confine only to the preceding Financial Year and after the expiry of the options of months availed in that Financial Year if one intends to continue with the same revision or further revision , a fresh Application shall be entertained only if a few months remain balance out of six months in that Financial or otherwise, henceforth, the billing shall start with the original sanctioned Contract Demand in that Financial Year as per provisions. This clears the contention that fresh application is required.
2. After going through the said averments of the Complainant in details as well as contentions in depth, opinion of CGRF in order dt.24.05.2003 and relevant clauses of supply code along with letter dt. 25.10.2018 of Chief Engineer (Commercial) Shimla on the Internal Procedural Instructions issued after the notification of the 2nd amendment of clause 3.10(a), this Appellate Forum lands to the very clear consensus that the Complainant has misconceived the essence of hidden meaning of clause 3.10(a) of the supply code both in 1<sup>st</sup> Amendment relevant operative part as well as 2<sup>nd</sup> Amendment and could not fetch the exact contentions behind the 2<sup>nd</sup> amendment when read in conjunction with 1<sup>st</sup> amendment & the procedural instructions issued vide Chief Engineer (Comm.) letter dt.25.10.2018 as the Complainant is referring all above provisions in isolation .

This closes the findings on Issue-3.

**K-Order:**

1. The order passed by the Consumer Grievance Redressal Forum (CGRF) at Kasumpti Shimla on dated 24.05.2023 in Complaint No. 1421/4/22/37 is upheld.
2. The demand notice raised by the Respondent Board stands withdrawn as per the Affidavit alongwith calculation sheet placed on record, submitted by the Respondent (Sr. Executive Engineer, Electrical Division, HPSEBL, Parwanoo) through letter dt. 22.11.2023 and amount of Rs. 6,75000/- stands refunded & credited in the bill of Complainant for the month 10/2023 vide sundry item No. 442/76/47.
3. In terms of Clause 5.7.3 of the Supply Code, 2009 read with Regulation 26a(2)(ii) of Himachal Pradesh Electricity Regulatory Commission (Consumer Grievances Redressal



*Ruphal*



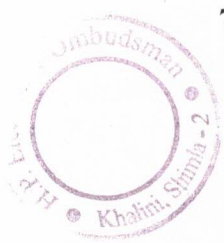


**HIMACHAL PRADESH ELECTRICITY OMBUDSMAN**  
**SHARMA SADAN, BEHIND KEONTHAL COMPLEX, SHIMLA-171002**

Phone: 0177-2624525, email: [ombudsmanelectricity.2014@gmail.com](mailto:ombudsmanelectricity.2014@gmail.com)

Forum and Ombudsman) Regulations, 2013 and subsequent 1st Amendment dt. 26.11.2019 and 2<sup>nd</sup> Amendment dt. 20.01.2022 of the said regulation respectively, the Complainant is entitled to avail requisite interest on the excess amount paid by the complainant which stands refunded/adjusted by the Respondent without interest and intimated through above referred affidavit. However, before settlement of interest part, the Respondent Board is directed to give due cognizance to the following directives:

- a. To constitute a committee on Division level to assess the period for which the interest is applicable in terms of above provisions with specific reference to the date of applicability of the said Regulations.
  - b. The Committee to follow the methodology for interest part in line with clause 5.7.1 read with clause 5.7.3 of the Supply Code 2009 and subsequent amendments if any for adjustments.
  - c. The committee also to see if any of the contentions of the Complainant as per submissions in addition to above remain unattended i.e rolling back of LPS if not leviable under present circumstances when the amount is liable for refund, the same may be settled in consonance with the relevant and prevalent provisions, only if viable.
  - d. The committee to ensure the presence of representative of the Complainant during the process of scrutiny for prudent settlement of issues without prejudice.
  - e. The committee to adhere to Supply Code clause 3.10 (a) of (Second Amendment) Regulations, 2018 dated 31.07.2018 read with clause 3.10 (b) of (First Amendment) Regulations, 2014 dated 11.06.2014 with explicit reference to the date of applicability of above Regulations/Amendments, procedural instructions issued by the Chief Engineer(Comm.) vide letter dt.25.10.2018 and the findings of this court on the Issues 1 to 3 above, while examining the revisions of Contract Demand whether permanent or temporary during the period of dispute in question.
4. The Respondent Board is directed to overhaul the Complainant's account accordingly within 30 days from the date of issuance of this order excluding holidays.
  5. The Respondent Board is at liberty to adjust the said amount through future energy bills of the Complainant strictly following the methodology as per prevalent clause 5.7.1 & 5.7.3 of Supply Code 2009 read with provision 26 of Hon'ble HPERC (Consumer Grievances Redressal Forum and Ombudsman) Regulations, 2013 and its subsequent 1<sup>st</sup> Amendment dt. 26.11.2019 and 2<sup>nd</sup> Amendment dt. 20.01.2022 respectively which so ever applicable with reference to period of dispute.
  6. Under the powers drawn from the provisions of Regulation 37 (3)(d) (e) of Himachal Pradesh Electricity Regulatory Commission (Consumer Grievances Redressal Forum and Ombudsman) Regulations, 2013, both Complainant and Respondent Board are directed to keep awareness for immediate implementation of the ensuing Amendments to be issued by the Hon'ble Commission to avoid litigations and violations in future thereof.
  7. The Respondent Board is further directed to report compliance of the directions as stated above within a period of 30 days excluding holidays from the date of issuance of this order to avoid onus of Regulation 37(6) of Himachal Pradesh Electricity Regulatory Commission (Consumer Grievances Redressal Forum and Ombudsman) Regulations, 2013.







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

Phone: 0177-2624525, email: [ombudsmanelectricity.2014@gmail.com](mailto:ombudsmanelectricity.2014@gmail.com)

8. The parties are left to bear their own costs.
9. The Complaint filed by M/Swastik Industries R/O Plot No. 41-42, Sector-1, Industrial Area, Parwanoo, District Solan, HP-173220 is hereby disposed of.

Given under my hand and seal of this office.

Dated: 12/12/2023  
Shimla

*Surpal*  
12/12/2023

Electricity Ombudsman