



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

In the matter of:

Complaint No. 12/2023

M/S Kusum Gupta & Associates Through Sh. Chander Prakash Gupta, S/O Sh. Murari Lal Gupta, o/o Village Nagli, Oachghat, Tehsil & District Solan, HP-173223.

- Complainant

Vs

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

- Respondents

- 1. Complaint No. 12/2023 (Registered on 27/04/2023)**
- 2. (Orders reserved on 04/10/2023, Issued on 13/10/2023)**

Counsel for:

The Complainant: Sh. Bhawan Chand Advocate
The Respondents: Sh. Rajesh Kashyap Advocate
 Er. Kuldeep Singh, JE., ESD. NO.III, Solan.
 Sh. Jitender, Sr. Astt.

CORAM

Er. Deepak Uppal
HP Electricity Ombudsman

Order

1. The case was received & registered on 27/04/2023. Vide interim order dt.27.04.2023, the Complainant was directed to submit proof of having deposited 50% of the disputed amount with the Respondents by 04/05/2023 positively. It was further added that the case shall be listed only after submission of proof of the such amount.
2. The Complainant had now provided proof of having deposited total 50% of the disputed amount. Vide interim order dt.04/05/2023 the Respondents were directed to file their reply duly supported by attested affidavit on or before 19/05/2023 positively. The case was listed for admission hearing on 20/05/2023 at 12:00 PM or immediately thereafter.
3. The Respondents had failed to file their reply by 19/05/2023 and prayed for some time. Prayer granted. The Respondents were directed to file their reply duly supported by attested affidavit on or before 29/05/2023 positively and the Complainant to file rejoinder by 01/06/2023. The case was listed for hearing on 03/06/2023.
4. Both the parties were heard again. The Respondents had again failed to file their reply by 29/05/2023 and prayed for some time. Prayer granted. The Respondents were directed to file their reply duly supported by attested affidavit within two weeks. The Complainant to file rejoinder one week thereafter. Separate Interim Order was to be issued for fixing the hearing



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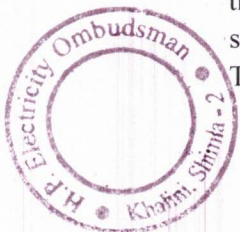


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date. The Respondent Board filed reply on 16/06/2023 and complainant to file rejoinder by 26/07/2023. The matter was listed for hearing on 27/07/2023.

5. The matter was heard. Counsel for complainant attended the court and prayed for some more time for submission of rejoinder which otherwise they were supposed to submit on or before 26/07/2023. In spite of exorbitant delay in submission, this Appellate as a special request, prayer granted as a last opportunity and directed the complainant to submit the rejoinder within two weeks' time. The case was listed for hearing on 22/08/2023.
6. The matter was heard. Both complainant and Respondent confirmed submissions of requisite documents as directed during the course of hearings. The case was listed for Arguments on 29/08/2023.
7. The counsel for complainant requested for some additional documents relevant to case from Respondent Board through application and supplied the copy of same to counsel for Respondent. This Appellate directed Respondent Board to supply the requisite documents to the complainant positively by 31/08/2023. The case was listed for final arguments on 02/09/2023.
8. The matter was heard. Both the parties advanced their arguments. But the arguments could not be concluded as the counsel for complainant during the course of arguments asked the Respondent Board to ensure on an affidavit that the old energy meter along with old CT/PT have not been disconnected and are still in the circuit for comparative purpose with reference to the check meter and new CT/PT meters installed. This Appellate agreed and directed Respondent Board to supply the requisite documents to the complainant by 05/09/2023 and complainant to file reply if required by 07/09/2023 positively. The case was listed for final arguments on 12/09/2023.
9. In continuation to this Court order dt.02/09/2023, due to inability of the Ld. Counsel for the Complainant to appear for arguments on 12/09/2023 as conveyed by him through e-mail dated 11/09/2023 that vehicular traffic is not plying on the road due to land slide in his village and requested for next date of hearing. this Appellate, considering the request as genuine, the matter which was listed for hearing on 12/09/2023 was rescheduled for final Arguments on 14/09/2023.
10. The matter was heard. Both the parties advanced their arguments. During the course of arguments, concerned officers exchanged their views on the instant issue and also handed over the relevant documents during the course of arguments which were taken on record considering the austerity of the same towards final findings. The counsel for complainant denied for taking affidavit as contended in the last hearing on dated 02/09/2023 as he showed satisfaction on confirming from the complainant that the old energy meter along with old CT/PT have not been disconnected and are still in the circuit for comparative purpose with reference to the check meter and new CT/PT meters installed.
11. The arguments could not be finalized as the complainant put forth his submissions for rectification of bill raised by the Respondent Board on account of error apparent to the period of dispute and requested for submission of revised calculations. The Respondent Board accepted the error occurred in computation and this Appellate Forum after going through the record agreed to the arguments made by the counsel for complainant and directed Respondent Board to come along with fresh calculations on the differential bill with due rectification in the next date of hearing. Both Respondent Board and Complainant were further directed to submit written arguments also, after the final arguments are heard on the next date of hearing. The case was further listed for final arguments on 04/10/2023.



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12. The matter was heard. both the parties advanced their arguments. During the course of arguments, concerned officers also appeared and exchange their views on the instant issue. Respondent Board submitted fresh calculations on the differential bill with due rectification. The Complainant submitted written arguments also which were taken on record. However, no written arguments were submitted by the Respondent, instead they preferred verbal arguments. The arguments were concluded. Orders reserved. Hence, delay.

A-Brief Facts of the Case:

1. M/S Kusum Gupta & Associates Through Sh. Chander Prakash Gupta, S/O Sh. Murari Lal Gupta, o/o Village Nagli, Oachghat, Tehsil & District Solan, HP-173223 has filed an application, received & registered on 27/04/2023, under provisions of Regulation 28 (1) of Himachal Pradesh Electricity Regulatory Commission (Consumer Grievances Redressal Forum and Ombudsman) Regulations, 2013 against the final Orders passed by the Consumer Grievance Redressal Forum (CGRF) at Kasumpti on dated 29/03/2023 in Complaint No. 1413/4/22/36, dated 20/12/2022. Copy of the Complaint has also been sent by post to the Respondents on 27/04/2023.
2. Since the Complainant have requested for quashing and setting aside the orders of the Forum below, the provisions of sub-regulation 1 (b) of Regulations 28 of Himachal Pradesh Electricity Regulatory Commission (Consumer Grievances Redressal Forum and Ombudsman) Regulations, 2013 shall be applicable in this case.
3. The Complainant have also filed an application under the provisions of Regulation 36 of Himachal Pradesh Electricity Regulatory Commission (Consumer Grievances Redressal Forum and Ombudsman) Regulations, 2013. He has prayed for granting order for restraining the Respondents from disconnection of electricity connection by the Respondents.
4. Prayer granted. By the powers conferred under the provisions of Regulation 36 read with Regulation 33 (2) of Himachal Pradesh Electricity Regulatory Commission (Consumer Grievances Redressal Forum and Ombudsman) Regulations, 2013, the Respondents are directed not to take any coercive action such as disconnection of electricity connection of the Complainant's premises during pendency of the Complaint at this Appellate Forum.

B-The Complainant's Submission:

1. The Complainant submits that they have filed a complaint before the Consumer Grievances Redressal Forum regarding the demand raised in terms of Demand Notice dated 02/12/2022 for Rs. 29,70,629/- on account of alleged overhauling of account of the petitioner/complainant. In the Demand Notice it has been alleged that the energy consumption is recorded through energy meter having serial No. HPB09904, make Secure Meter along with CT/PT Unit Sr. No. 2486 make Floral Electrical Pvt. Ltd. it is further alleged in the notice that keeping in view of phase missing, the check metering equipment (CT/PT) are installed on 23/08/2022 to 03/10/2022 to check the accuracy of existing meter. It has been further alleged in the notice that the original meter is found 62.5% slow. On the basis of slowness of energy meter, the account of the complainant has been overhauled and less recorded consumption is charged for the amount of Rs. 29,70,629/- w.e.f. October 2014 to October 2022.
2. The Complainant submits that the Forum below partly allowed the complaint of the Petitioner/Complainant. Copy of the Order dated 29/03/2022 is appended herewith as



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annexure P-ii. The Petitioner/Complainant feeling aggrieved against the order dated 29/03/2022 passed by the Ld. Forum below, prefers the present Representation on the grounds mentioned below.

Grounds of Representation:

- a. The Complainant submits that the Ld. Forum below has not appreciated the pleadings of the Petitioner/Complainant in right prescriptive. In this case the reply filed by the Respondents is totally against the provisions of Electricity Act as well as Supply Code. The Respondents have categorically referred the provisions of abridged conditions of supply on the basis of the aforesaid amount of Rs. 29,70,629/- has been levied against the Petitioner/Complainant. It is relevant to mention here that the abridged conditions of supply are not applicable at this moment and the overhauling has to be calculated on the basis of supply code. It is further in the reply of the respondents that the CT/PT equipment was defective and energy meter was recording the consumption at the lower side. The Respondents have failed to make clear in the reply that how the account of the Petitioner/Complainant was overhauled. The Ld. Forum below has not taken into consideration the pleadings. Judgment and arguments of the Petitioner/Complainant and given the finding against the Petitioner/Complainant without any basis.
- b. The Complainant submits that the Ld. Forum below has not applied its mind and decided the complaint in a very slip shot manner. The defence developed by the respondents that CT/PT meters where the accuracy of the meter is not involved and it is the case of incorrect connection, defective CT/PTs, genuine calculation and its mistakes etc. charges would be adjusted in favour of the respondent for the period the mistake/defect continued. It is important to mention here that the Demand Notice is totally contradictory with the reply filed by the respondents. The Demand Notice is appended herewith as Annexure P-3 and Copy to Reply filed by the Respondents is appended herewith as Annexure P-4 the Petitioner/Complainant has specifically developed her case that Meters, CT/PT Unit is meter for the purpose of Section 26 of the Act. Further as per the provisions of 1.2.36 of the Supply Code "Meter means and includes metering equipment or a set of integrated instruments used to measure/record singularly or combined electrical parameters including electrical energy and electrical power both in KWH/KVAH during a given period".
- c. The Complainant submits that as per 1.2.37 "Metering equipment means set of equipment such as current transformer, potential/voltage transformer, necessary wiring and accessories etc. deployed in conjunction with the meter to measure/record the amount of electrical energy supply". It has been argued on behalf of the Petitioner/Complainant that in such circumstance's provisions of 4.4 of the Supply Code will apply. In these circumstances the provisions of 4.4.8 of the Supply Code will be applicable and the consumer's account will be overhauled as per these provisions and it has been specifically elaborated in these provisions that if a meter on testing is found to be beyond the limits of accuracy as specified in the regulations framed by the Authority under Section 55 of the Act, the electricity charges for all categories of consumer will be computed in accordance with the said test results for a period of Six Month immediately preceding. The provisions



Signature



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adopted by the Respondents regarding the slowness of meters is totally against the provisions of law. It is important to mention here that Abridged Conditions of supply cannot supersede the provisions of Supply Code. As per the para 18 of the Order dated 29/03/2022 the Ld. Forum no doubt considered that for the purpose of interpretation of Supply Code, meter and metering equipment may be construed as one but the Ld. Forum below has wrongly and illegally opined that for practical purpose meter and metering equipment are distinct. It is significant to mention here that the order of the Forum below should be based upon the provisions of the Supply Code not from the personal view of Forum. The forum below has committed serious illegality by passing the order dated 29/03/2022 and given the wrong and illegal findings which is purely against the provisions of law. In these circumstances the order passed by the Forum below is self-contradictory without any appreciation of law, is liable to be quashed and set-aside. The order of the Forum/Court cannot be based upon practical knowledge but it has to be based upon the judicial pronouncements and provisions of the Act and code. The Ld. Forum below has crossed the limit of judicial mind while passing the order dated 29/03/2022. The Ld. Forum below in para 35 of order dated 29/03/2022 has wrongly and illegally appreciated the sub-code 4.4.8(ii) and 4.4.8(iii). Actually, in this case the provisions of 4.4.8(i) of the Code has to be applied.

- d. The Complainant submits that the Ld. Forum below has committed gross negligence while passing the order dated 29/03/2022. In this case the respondents have not complied with the provisions of Supply Code which has to be applied for defective meter. It is pertinent to mention here that as per the Judgment 2015(1) Civil Court Cases 106 (Chhatisgarh) it has been made clear that meters-CT/PT Unit- Current Transformer/ Potential Transformer is meter for the purpose of Section 26 of the Indian Electricity Act. Similarly, in Judgment AIR 1998 SC 846 it has been held that Potential Transformer is meter. The Ld. Forum below has not appreciated the Judicial Pronouncement as cited by the Petitioner/Complainant in this case and given its finding totally against the law laid down by the Hon'ble Supreme Court in the aforementioned case.
3. The Complainant submits that the Representation filed by the Petitioner/Complainant in the present case is within the period of limitation. The Petitioner/Complainant received the copy of order dated 29/03/2022 on 04/04/2023.
4. The Complainant submits that the Petitioner/Complainant has not filed any other Representation/Case in any other court on same and similar ground against the order of the Forum.
5. The Complainant therefore most respectfully prayed that the Representation may kindly be allowed and the order passed by the Forum dated 29/03/2022 may kindly be quashed and set-aside.

C- The Respondent's Submission:

1. The Respondent Submits reply to the complaint filed under Regulation 17 of the HPERC (CGRF and Ombudsman) Regulations, 2013

Preliminary submissions:

2. The Respondent Submits that the demand as raised by the respondents in this matter is perfectly legal and valid in terms of the clause 9.3.5.4 of the Abridged Conditions of the



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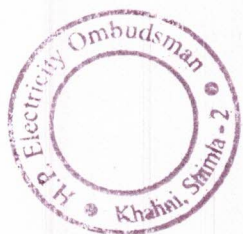
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Supply in as much as the respondents have detected the defective CT/PT. it is submitted that the as per the provision ibid, it is very well provided that in case of CT/PT meters where the accuracy of the meter is not involved and it is case of incorrect connections, defective CT/PTs, genuine calculations and mistakes etc., charges would be adjusted in favour of the HPSEBL/consumer as the case may be for the period the mistake/defect continued. In the present case, on account of the defective CT/PT equipments, energy meter was recording the consumption at the lower side hence, the respondents, to ascertain the accuracy, have installed another CT/PT and check meter at the premises of the complainant. The check meter was installed to define the percentage of the slowness as such the meter was found to be slow 62.5 % and respondents have taken action as per the clause No 9.3.5.4 of the Abridged Conditions of the Supply, which are statutory in nature. The complainant is liable to pay the demand as raised by the respondents as such the complaint being devoid of any merits liable to be dismissed.

3. The Respondent Submits that as per the conditions of the supply mentioned above, correct revised bill was required to be issued to the complainant on the basis of the results and the same has been issued to the complainant, which is totally within the ambit and scope of the law as such the complaint as preferred by the complainant is liable to be dismissed. The consumer account overhauled on the basis of original meter is found 62.5% slow, since in the present case, there is no involvement of the accuracy of meter and only it is case of defective CT/PT wherein there was missing of phases, which results in slowness of the meter by the value of 62.5 %.

Reply on merits:

- A. The Respondent Submits that the contents of this para are totally wrong, incorrect hence denied emphatically. It is specifically denied that that the respondents have filed the reply against the provisions of Electricity Act as well as Supply Code. It is submitted that complete mechanism for the overhauling of the consumer account has been provided under the HP Electricity Supply Code, 2009 and the clause No 9.3.5.4 of the Abridged Terms and Conditions of the Supply. Conditions No 9.3.1. crystal clear provides that HPSEBL have right to check and test any meter and metering equipment installed in consumer premises if there is a reasonable doubt about accuracy. It is submitted that when the respondents have doubted the accuracy of the metering equipments i.e. CT/PT installed in the premises of the complainant, then CT/PTs and test meter were installed by the respondents on 23-08-2022 to check the accuracy of the CT/PTs. After fetching data from the CT/PT and check meter from 23-08-2022 to 03-10-2022, and compared with the consumer meter installed at the premises, it has been revealed that the consumer meter was running slow to the extent of 62.5 %. Then the respondent in terms of the condition No 9.3.5.4 of the Abridged Conditions of Supply has overhauled the account of the consumer and the impugned demand has been raised from the complainant. Copy of the MRI data, MTO and detail of the account overhauled is placed on record as Annexure R-1 for the kind perusal of this Ld. Ombudsman. It is submitted that at present the billing of the consumer is being done on the basis of the check meter reading.
- B. The Respondent Submits that the contents of this para are totally wrong, incorrect hence denied. It is completely wrong to say that the Demand Notice is totally contradictory. It is submitted that in the demand notice which was given, it was written in very clear words that "keeping in view the phase missing, the check metering equipment (CT/PT are installed on dated 23.08.2022 to 03.10.2022 to check the accuracy of existing meter.



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It is pertinent to mention here that the complete MRI data is available where the complete record of phase missing is available from 09.03.2015 to 10/2022, **The purpose of the installation of check meter is only to prove the Phase missing** due to defective CT/PT unit (Complete MRI data as Annexure-as above) .As per the Sales Manual Instructions No. 26.4 “ **In case of CT/PT meters where the accuracy of the meter is not involved and it is a case of incorrect connections, defective CTs/PTs, genuine calculation & mistakes etc., charges would be adjusted in favour of the HPSEBL/ consumer as the case may be for the period the mistake/defect continued**”.

- C. The Respondent Submits that the complainant has grossly misconceived and misinterpreted the provision of the law and judgment 2015 (1) Civil Court Cases 106 (Chhattisgarh). It is submitted that the complete overhauling has done on the basis of phase missing due to defective CT/PT not defective meter as the complainant is tried to misinterpreted to add again and again defective meter. When it has been established on the basis of the results of the CT/PTs and through MRI data, it was not the case of the accuracy of meter rather it was case of defective CT/PT.
4. The Respondent Submits that in view of above, it is therefore, humbly and respectfully prayed that the complaint filed by the complainant is devoid of any merits as such same is liable to be quashed and set aside.

D- The Complainant's Additional Submissions through Rejoinder:

1. The Complainant submits that the contents of para 1 & 2 of preliminary submissions are wrong and denied. It is specifically denied that the demand raised by the respondents in this matter is perfectly legal and valid in terms of clause 9.3, 5.4 of the Abridged Conditions of the Supply in as much as that the respondents have detected the defective CT/PT. It is pertinent to mention here that Abridged Conditions of Supply is not applicable in the present situation and therefore the respondents cannot get any benefit of the provisions of Abridged Conditions of the Supply as alleged. As submitted by the respondents in this para that CT/PT meters where the accuracy of the meter is not involved and it is the case of incorrect connections, defective CTPTs, genuine calculations and mistakes etc., charges would be adjusted in favour of the respondent as the case may be for the period the mistake/defect continued. As a matter of fact this submission is perfectly illegal and against the provisions of law. It is respectfully submitted here that “**Meters; CT/PT Unit – Current Transformer/Potential Transformer is Meter for the purpose of Section 26 of the Act Part of Meter.** This fact has been duly approved by the Hon'ble Supreme Court in its judgment AIR Supreme Court 846. Again Hon'ble High Court of Chhatisgarh in its judgment Civil Court Cases 2015 Volume 1 page 106, it has been held by this Hon'ble Court that CT/PT Unit is a part of meter. As per the definition of Meter given in Supply Code 1.2.36 “**Meter means and includes metering equipment or a set of integrated instruments used to measure/record singularly or combined electrical parameters including electrical energy and electrical power both in KWH/KVAH during a given period.**” As per 1.2.37 “**Metering equipment means set of equipment such as current transformer, potential/voltage transformer, necessary wiring and accessories etc. deployed in conjunction with the meter to measure/record the amount of electrical energy supply.**” It is thus clear that in case as per the provisions of 4.4 if there is a reasonable doubt about its accuracy and the consumer will provide the Licensee all necessary assistance in conducting the test. It is important to mention here that the respondents have not tested the accuracy of energy meter from any laboratory. There is no provision prescribed in the Supply Code as



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well as in the Electricity Act the defect if any will be detected by installing a check meter. The respondents failed to comply with the provisions of Supply Code in the present case. In such circumstances the provisions of 4.4.8 will be applicable and the consumer's account would be overhauled as per these provisions and it has been specifically elaborated in these provisions that if a meter on testing is found to be beyond the limits of accuracy as specified in the Regulations framed by the authority under Section 55 of the Act, the electricity charges for all categories of consumers will be computed in accordance with the said test result for a period of six months immediately preceding. The provisions adopted by the respondents regarding the slowness of meter is totally against the provisions of law. As a matter of fact Abridged Conditions of Supply cannot supersede the provisions of Supply Code. The provisions of Supply Code are also to be binding before this Hon'ble Forum.

Rejoinder On Merits:

2. The Complainant submits that the contents of para A of Reply on merits are false, incorrect, wrong and as such are specifically denied. It is pertinent to mention here that the reply filed by the respondents against the provisions of Supply Code. It has already been mentioned in para supra of Rejoinder to Preliminary Submissions. So far as abridged conditions of the supply are concerned, these conditions are not applicable in the present case simply for the reason that Abridged Terms and Conditions of Supply is not in existence as it has been abolished. It is submitted here that when the CTPT installed in the premises and the accuracy of CTPT is in doubt as it was recording slow consumption to the extent of 62.5%, in that eventuality the provisions of 4.4.8 of the HP Electricity Supply Code will come into picture and the account of the complainant/appellant would be overhauled as per this provision. The respondents have wrongly and illegally overhauled the account by applying the condition No. 9.3.5.4 of the Abridged Conditions of Supply. As submitted supra the Abridged Conditions of Supply has already been abolished and as such the account of the appellant/complainant had been wrongly overhauled. It seems that the respondents have committed illegality which is liable to be corrected as per the provisions of Supply Code. The contents of para A of the Appeal are reiterated and reasserted.
3. The Complainant submits that the contents of para B of Reply on merits are false, incorrect, wrong and as such are specifically denied. As per the instruction No. 26.4 of the Sales Manual will not override the provisions of HP Electricity Supply Code. It is submitted that HP Electricity Supply Code is made in consonance with the provisions of Section 50 of Electricity Act 2003. Therefore the HP Electricity Supply Code will prevail upon the Sales Manual. The contents of para B of the Appeal are reiterated and reasserted.
4. The Complainant submits that the contents of para C of Reply on merits are false, incorrect, wrong and as such are specifically denied. The contents of para C of the Appeal are reiterated and reasserted.
5. The Complainant submits that it is therefore most respectfully prayed that Appeal of the appellant/complainant may kindly be allowed in the interest of justice.

E- The Complainant's written Arguments:

Brief facts of the case are as under:

1. The Complainant submits that a Demand Notice which is Exhibit P3 was issued to the Appellant/Petitioner by the respondents vide dated 02-12-2022. As per the contents of this Demand Notice, it submits that the energy consumption is recorded through energy meter having





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Sr. No. HPB09904 MAKE SECURE METER alongwith CT/PT Unit Sr. No. 2486 MAKE FLORAL ELECTRICAL PVT. LTD. Keeping in view of the phase missing the Cheque Metering Equipment (CT/PT) are installed on 23-08-2022 to 03-10-2022 to check the accuracy of existing meter. It was further submitted through this Demand Notice, the original meter is found 62.5 % slow (Copy of Check Meter and Phase Missing MRI data is enclosed). Accordingly, the account of the appellant/complainant has been overhauled and less recorded consumption is charged for the period w.e.f. October 2014 to October 2022 and as per this Demand Notice the amount is calculated to Rs. 29,70,629/- as is recoverable from the appellant/complainant.

2. The Complainant submits that the parawise arguments of the appellant/complainant on the points(Metering Equipment, CT/PT are installed on 23-08-2022 to 03-10-2022) as mentioned in aforementioned para are as under:

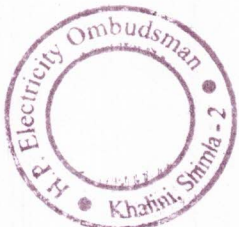
(A) So far as the Metering equipment(CT/PT) are concerned, it is a part of meter and it cannot be read in isolation. As per the Punjab State Electricity Regulatory Commission it is Supply Code, the definition of Meter has been clarified as **“Meter” means a device suitable for measuring, indicating and recording consumption of electricity or any other quantity related with electrical system and shall include, wherever applicable, other equipments such as Current Transformer, Voltage Transformer with necessary wiring & accessories or Capacitor Voltage Transformer necessary for such purpose;** Similarly H.P. Electricity Supply Code, 2009 vide Clause 1.2.36 **“meter” means and includes metering equipment or a set of integrated instruments used to measure and record singularly or combined electrical parameters including electrical energy and electrical power both in KWH/KVAH during a given period.** H.P. Supply Code has further clarified under Clause 1.2.37 **“metering equipment” means set of equipment such as current transformer, potential/voltage transformer, necessary wiring and accessories etc. deployed in conjunction with the meter to measure/record the amount of electrical energy supplied.** *Explanation – It shall also include any seal or sealing arrangement and other measures provided by the licensee for sealing reliability and for preventing theft/unauthorized use of electricity.* Besides this The Electricity Rules 2005 as amended upto 2020 and called The Indian Electricity Rules 1956. These rules have also clarified the definition of **“meter” means a set of integrating instruments used to measure the amount of electrical energy supplied or the quantity of electrical energy contained in the supply, in a given time which include current meter and metering equipment such as current transformer, capacitor, voltage transformer or potential or voltage transformer with necessary wiring and accessories.”**

(B) The respondents have wrongly and illegally overhauled the account of the appellant/complainant w.e.f. 2014 to 29-03-2022. As per the provisions prescribed under Punjab Electricity Supply Code, the meter which recorded the less consumption amounts to **Inaccurate meter**. This fact has also been argued on behalf of the respondents and stated that this is an Inaccurate meter. If this meter is accurate, in this Supply Code there is a provision prescribed vide Clause 21.5 regarding overhauling of consumer accounts.

21.5 Overhauling of Consumer Accounts

21.5.1 Inaccurate Meters

If a consumer meter on testing is found to be beyond the limits of accuracy as prescribed hereunder, the account of the consumer shall be overhauled and the electricity charges for all categories of consumers shall be computed in accordance



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with the said test results for a period not exceeding six months immediately preceding the:

- a) date of test in case the meter has been tested at site to the satisfaction of the consumer or replacement of inaccurate meter whichever is later; or
- b) date the 4 [defective] inaccurate meter is removed for testing in the laboratory of the distribution licensee.

* Central Electricity Authority (Installation and Operation of Meters) Regulations, 2006, as amended from time to time.

** IS 15707: 2006 & IS 14697:1999

Note: Where accuracy of meter is not involved and it is a case of application of wrong multiplication factor, the accounts shall be overhauled for the period this mistake continued.

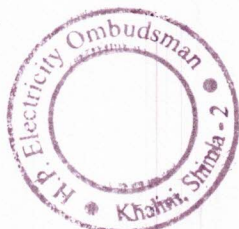
Similarly H.P. Supply Code vide Clause 4.4.8 Overhauling of Consumer Accounts:

- (i) If a meter on testing is found to be beyond the limits of accuracy as specified in the regulations framed by the authority under section 55 of the Act, the electricity charges for all categories of consumers will be computed in accordance with the said tests result for a period of six months immediately preceding.
 - (a) The date of test in case the meter has been tested at site to the satisfaction of the consumer
 - (b) The date the defective meter is removed for testing in the laboratory of licensee where such testing is undertaken at the instance of the licensee
 - (c) The date of receipt of request from the consume for testing a meter in the laboratory of the licensee

- (C) That there are many judicial pronouncements regarding the definition of meter as well as overhauling the account of the consumer/complainant. First of all **Civil Court Cases 2015 Volume 1 page 106 (Chhatisgarh)**, in this judgment the definition of meter has been prescribed as (i) Electricity Act 1910, Section 26 – Meters – CT/PT unit – Current Transformer/Potential Transformer is meter for the purpose of Section 26 of the Act. In this case the decision of the Hon'ble Supreme Court followed. In this judgment it is discussed that “it is common ground that the existing meter could not record the power stepping down was done by the PT. It is also not in dispute that after the recording of the consumption by the meter the power, which was reduced from 11000 to 110 Volts is not used by the respondents. This clearly shows that the only function of the PT was to enable the ascertaining or regarding of the amount of the energy supplied to the respondent. This instrument namely the PT has, therefore to be regarded as a meter in view of the provisions of Sub-Section 7 of the Section 26 and the second Proviso in particular, and therefore the High Court was right in coming to the conclusion that the Electrical Inspector had the jurisdiction to exercise his powers under section 26(7) of the Act.

Hon'ble Supreme Court of India given its verdict in 2016(1) Civil Court Cases 819 Supreme Court. Non-Functional meter – Short assessment of electricity charges. If there is short assessment for a long period, bill can be revised for the period for the period but limiting to twelve months.

Similarly, Corporate Consumers Grievances Redressal Forum Punjab State Power Corporation Limited in case titled as M/s Agarwal Roller Flour Mills Versus Punjab State Power Corporation Ltd. decided on 16-05-2023.



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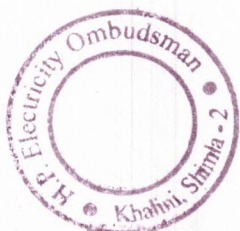
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In these judgments it has been clearly observed by the Court that the account of the petitioner be overhauled for a period of six months prior to the date of change of defective metering equipment.

In light of these judgments, the present case also falls within the same ambit and the principal for overhauling the account of the appellant/complainant should be adopted as per the provisions hereinbefore mentioned.

- (D) The Ld. Forum below has not appreciated this fact and given the wrong findings on each and every point. It is pertinent to mention here that the Ld. Forum below observed that there is mistake committed by the respondent but this mistake is a bonafide. From the bare perusal of the reply and documents supplied by the respondents, it is crystal clear that the respondent has committed mistake intentionally. There is a provision prescribed in the Electricity Act and Rules and as well as in the Regulations, the periodical inspection of the consumer premises has to be inspected in intervals by the respondent. But in this case the respondent has totally failed to establish on the record that despite periodical inspection inspected by the respondent, the complainant indulged in such illegal activities. Besides this there is no complaint against the complainant regarding the breaking of seals as well as use of unauthorized load. In all that eventuality, how the complainant is liable to pay the long dues to the respondent. During the course of oral argument, the counsel for the respondent argued that the complainant used electricity and as such he is liable to pay the charges of the same. It is significant to mention here that no doubt that complainant used energy but on the other side complainant is lay man and he is not having any technical knowledge regarding the installation of CT/PT. As per the case of the respondent it is the official of the respondent who firstly noted this fact that the CT/PT of the energy meter installed in the premises is recording less consumption. Here it is relevant to mention that when the respondent came to the fact that the energy meter of the complainant is running slow, how the respondent did not issue any notice to the complainant. It casts serious illegality on the part of the respondent. Another point which was argued by the counsel for the respondent that as per the provision of the Section 56 of the Electricity Act the complainant is liable to pay the charges to the respondent. Section 56 will not be applicable in the present case as there is a specific provision provided in the Act regarding the overhauling of account of the appellant/complainant. As a matter of fact, there is a Limitation Act prescribed under law in which the recovery of any dues can be recovered within three years. The judgments as cited by the respondents are not applicable in this case.

- (E) The demand raised by the respondents is totally illegal against the complaint. The respondent has not served any notice before installation of new electricity meter and CT/PT. Moreover, the respondent has also not issued any notice regarding the slowness of meter at any point of time. The respondent has not associated the complainant at the time of installation of new energy meter along with CT/PT. Besides this the calculation sheet provided by the respondent is not correct in the eyes of law and the same is liable to be quashed and set aside. In these circumstances there is no fault on the part of the complainant and it is the respondent who has intentionally and illegally concealed this fact from the complainant. Copy of extract of Sales Manual of Punjab, Sales Manual of H.P. and copy of extract of Indian Electricity Rules 1956 are annexed herewith. Provisions of Sales Manual will not be applicable since there is provision prescribed in



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the Act regarding the procedure and therefore the Act and law will prevail upon the Sales Manual.

3. The Complainant submits that in view of the submission made hereinabove, it is most respectfully prayed that kindly consider the arguments of the appellant/complainant and allow the representation accordingly in the interest of justice.

F- The Respondent's written Arguments:

The respondent preferred verbal arguments and did not submit written arguments.

G- The Arguments of both during proceedings :

1. During partial arguments on dt.14.09.2023, The Counsel for Complainant pointed out certain error in the period of dispute which according to Complainant March 2015 to March 2022 in place of October 2014 to October 2022 and prayed for necessary corrections. The Respondents agreed and were directed to submit revised calculations after making due corrections in the period of dispute.
2. The counsel for Complainant during arguments showed reliance on Indian Electricity act 1910,1948 and 1956 and read out relevant clauses in details. The Counsel for Respondent added to the arguments that after the Act 2003 came into existence, the above mentioned Acts under section 185 of 2003 Act stands repealed and read out the same in this context.
3. During proceeding on the arguments by the counsel for Complainant that there is no provision for site testing of faulty equipments, it was confirmed by the Respondent that under such circumstances this method of assessing at site the status of the faulty one with respect to healthy one, is more prudent than resorting to lab testing.
4. The Counsel for Respondent reiterated the contents of the submissions and emphasized that the MRI data is an authentic proof to establish the quantity and period of short assessment and the concerned officers appearing in the court also submitted comparative data to show the sluggishness of the meter on account of defective CT/PT with reference to the newly installed meter & CT/PT unit parallel to the system. The documents were taken on record. The matter was listed for final arguments on dt. 04.10.2023
5. The officers appearing as Respondent submitted revised calculations with due corrections of disputed period. The Counsel for complainant agreed and satisfied but for levy of Contract Demand Violation charges. The documents were taken on record. However, this Appellate was also not satisfied to see the sudden levy of additional charges and asserted that necessary directions shall given to the Respondent Board in the final order to again confirm the present status of connected load with reference to the test report submitted by the Complainant at the time of taking connection before acceptance of these additional charges as Contract Demand Violation charges. The counsel for Complainant agreed for this arrangement.
6. The counsel for respondent submitted a copy of A&A form executed and construed as Agreement signed by the Complainant at the time of taking connection. The same was also taken on record.
7. The counsel for complainant appreciably brought to the notice of this Appellate Forum different judgements of Hon'ble High Court and Hon'ble Supreme Court and read out the relevant extracts in very effective manners. The judgements thereof along with written arguments were also taken on record.



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H- Consumer Grievance Redressal Forum Order No.1413/4/22/36 dt. 29/03/2023:

FORUM –

1. This Forum has examined the relevant provisions of the Electricity Act, 2003, various relevant Regulations framed by the HP Electricity Regulatory Commission (or the HPERC) including relevant provisions of HPERC (Consumer Grievances Redressal Forum and Ombudsman) Regulations, 2013, CEA (Installation and Operation of Meters) Regulations, 2006, HP Electricity Supply Code, 2009 notified by the HPERC, amendments thereto and record as facts along with pleadings of the parties. This Forum has heard the parties at length. The considered opinion of the Forum has been gathered after considering the fair facts, evidences and correspondence placed on record and arguments adduced by both the parties;
2. Before the Forum proceeds in the matter, Forum feels it necessary to frame the issues for determination in the instant complaint –
 - (a) Issue 1: Whether, this is a matter of Tampering of meter falling under section 126 or under section 135 of the Electricity Act, 2003 whereby there is unauthorized use of electricity through a tampered meter or whereby there is dishonest tampering of meter?;
 - (b) Issue 2: Whether, Order of the Hon'ble Chhatisgarh High Court in writ petition No. 2805 of 1993, titled M/s Beekey Hygiene Products Vs Madhya Pradesh Electricity Board and Ors decided on 30.06.2014 is squarely applicable in the present circumstances of the instant matter?;
 - (c) Issue 3: Whether the Meter Reading Instrument (or MRI) data is sufficient evidence to establish defective metering or even when the MRI data is available, is it necessary to undertake Testing of meter and/or metering equipment under provisions of code 4.3 of HP Electricity Supply Code, 2009, hereinafter referred to as the Supply Code?;
 - (d) Issue 4: Whether, it is illegal and outside the powers of the Respondent HPSEBL, being the distribution licensee, to install a Check Meter?;
 - (e) Issue 5: Whether the provisions of code 4.4.8(i) of Supply Code for the purpose of over hauling of account of Complainant for Defective Meters are applicable in the circumstances of the instant matter?;
 - (f) Issue 6: Whether, the Respondent is within its rights to raise monetary demand as past period arrears on account of defective metering and whether Complainant is liable to pay this monetary demand so raised by the Respondent?.
3. At the outset Forum finds it expedient to reproduce the relevant provisions of definitions in the Supply Code and relevant provisions of code 4.3 and 4.4 of the Supply Code for the sake of clarity–

Quote

.....
 1.1 Definitions .–

.....
 1.2.36 “meter” means and includes metering equipment or a set of integrated instruments used to measure/record singularly or combined electrical parameters including electrical energy and electrical power both in kWh/kVAh during a given period;

1.2.37 “metering equipment” means set of equipment such as „Current Transformer“, „Potential/Voltage Transformer“, necessary wiring and accessories etc. deployed in



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conjunction with the meter to measure/record the amount of electrical energy supplied. Explanation.- It shall also include any seal or sealing arrangement and other measures provided by the licensee for sealing, reliability and for preventing theft/unauthorised use of electricity;

.....

.....

4.3 Testing of Meters .-

4.3.1 It will be the responsibility of the licensee to satisfy itself regarding the accuracy of a meter before it is installed at the consumer premises.

4.3.2 The licensee shall maintain such number of accredited testing laboratories as per the standards prescribed by the National Accreditation Board for Testing and Calibration Laboratories (NABL) as the Commission may require and all such laboratories will at least be equipped with testing equipment as provided in the regulations framed by the Authority under Section 55 of the Act.

4.3.3 After testing in the laboratory, the body of the meter will be duly sealed by an officer(s) authorized by the licensee.

4.3.4 The licensee may also conduct periodical inspection/testing of the meters installed at the consumer's premises as per Central Electricity Authority (Installation and Operation of Meters) Regulations, 2006 made under Section 55 of the Act.

4.3.5 The Commission may also require the licensee to undertake third party testing of meters/metering equipment installed at the consumers' premises.

4.4 Defective Meters .-

4.4.1 The licensee will check and have the right to test any meter and metering equipment installed at a consumer's premises if there is a reasonable doubt about its accuracy and the consumer will provide the licensee all necessary assistance in conducting the test. The consumer will have the right to be present during such testing.

4.4.2 (a) A consumer may request the licensee to test the meter/metering equipment installed in his premises, if he doubts its accuracy. The licensee will undertake such site testing within seven days on payment of fee as specified in the Schedule of General Charges approved by the Commission.

(b) If, after testing, the meter is found to be defective then the fee deposited in accordance with sub-para (a) will be refunded by adjustment in the electricity bills for the immediately succeeding months. In case, the meter is found to be correct then the licensee will not refund such fee.

4.4.3 In case a consumer is not satisfied with the site testing of the meter installed in his premises or the meter cannot be tested by the licensee at site then the meter will be removed and packed for testing in the laboratory of the licensee and another duly tested meter will be installed at the premises of such a consumer. In the event the licensee or the consumer apprehends tampering of meter and/or its seals then the licensee and the consumer will jointly seal the packing containing the meter. The seals will be broken and testing undertaken in the laboratory of the licensee in the presence of the consumer, if he so desires.

4.4.4 In case of testing of a meter, removed from the consumer premises for the purpose of testing in the licensee's laboratory, the consumer would be informed of the date of testing at least seven days in advance. The signature of the consumer, or his



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authorized representative, if present, would be obtained on the Test Result Sheet and a copy thereof shall be supplied to the consumer.

- 4.4.5 (a) Subject to the provisions in sub para (b), in case a meter installed at a consumer's premises gets burnt/ broken/ defective or stops functioning, a new tested meter will be installed within the time lines specified in the schedule to the Himachal Pradesh Electricity Regulatory Commission (Distribution Licensees' Standard of Performance) Regulations, 2005. If the meter gets burnt, broken or damaged due to reasons attributable to the consumer, the licensee will debit the cost of the meter (if provided by the licensee) to the consumer who will also be informed about his liability to bear the cost.
- (b) in case of failure of supply due to the burnt, broken, damaged or defective meter, the licensee shall endeavour to restore the supply on the same day by way of installation of new tested meter.
- 4.4.6 In case where a meter installed at a consumer's premises is reported to have been stolen and the FIR to this effect has been lodged by the consumer, supply of electricity will be immediately restored by the licensee at consumer's request by installing another tested meter and the cost of the meter shall be recovered from the consumer through electricity bills for the immediate succeeding months.
- 4.4.7 In respect of the consumer owned defective/burnt/broken meter, the replacement shall be made by way of a licensee owned meter till such time the consumer provides a new meter duly tested as per para 4.3 and the same is installed as per provisions of this Code.
- 4.4.8 Overhauling of consumer accounts –
- (i) If a meter on testing is found to be beyond the limits of accuracy as specified in the regulations framed by the Authority under Section 55 of the Act, the electricity charges for all categories of consumers will be computed in accordance with the said test results for a period of six months immediately preceding –
- (a) the date of test in case the meter has been tested at site to the satisfaction of the consumer ; or
- (b) the date the defective meter is removed for testing in the laboratory of the licensee where such testing is undertaken at the instance of the licensee ; or
- (c) the date of receipt of request from the consumer for testing a meter in the laboratory of the licensee.
- Any evidence provided by the consumer about conditions of working and/or occupancy of the concerned premises during the said period(s) which might have a bearing on computation of electricity consumption will, however, be taken into consideration by the licensee.
- (ii) The accounts of a consumer will be overhauled for the period a burnt/defective meter remained at site, on the basis of energy consumption of the corresponding period of the previous year after calibrating for the changes in load, if any. In case the average consumption for the corresponding period of the previous year is not available then the consumer will be tentatively billed for the consumption to be assessed in the manner indicated in para 4 of Annexure-A and subsequently adjusted on the basis of actual consumption in the corresponding period of the succeeding year.
- (iii) If a consumer is liable to pay an additional amount or is entitled for a refund in consequence of an overhaul of his account in accordance with sub- paras 4.4.8 (i) and



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(ii), the licensee will effect recovery or adjust the excess amount in the electricity bills of the immediately succeeding months.

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4 The Forum now proceeds to determine each issue on merits –

5 Issue 1: After examining the record, the Forum finds that the impugned monetary demand raised vide Notice dated 02.12.2022 by the Respondent, has not been done under section 126 or under section 135 of the Electricity Act, 2003. The Demand Notice also does not refer to any tampering, though the Meter Reading Instrument (MRI) data sheets (Annexure C3) do refer to Tamper events. It is a known fact that the modern-day meters are capable of recording and storing electricity consumption data, electricity supply parameters including various events related to these. The Forum is also aware that these events and data can be retrieved from the meter using an MRI. On examining the MRI data, it becomes clear that the Tamper event referred to in the MRI data sheets is merely an anomaly event being recorded in the Meter. Thus, the Forum on this very basis concludes that the Complainant is misconceived in assuming that the present matter is of tampering of meter / meter seal broken in the context of unauthorized use of electricity or in the context of dishonest tampering, where the question of removal or broken meter seals may have arisen, but which is certainly not the case herein. It is merely an apprehension of the Complainant. Had the present matter been one of unauthorized use of electricity or a case of dishonest tampering, such would then have appropriately been dealt under the relevant provisions of either Section 126 or Section 135 of the ibid Act and the corresponding Regulations framed in this regard, which is not the case here. The Forum concludes that the instant matter is not that of tampering / meter seal broken or one of unauthorized use of electricity or a case of dishonest tampering covered under provisions of either Section 126 or Section 135 of the ibid Act. Thus, the Forum rejects the contention raised by the Complainant with regard to Tampering of meter and broken meter seals, as being misplaced, such not being the case in the complaint herein. Issue 1 is decided accordingly.

6 Issue 2: After examining the ibid Order dated 30.06.2014 passed by the Hon'ble Chhatisgarh High Court, Forum finds that this Order by the Court is in terms of Indian Electricity Act, 1910 which stands repealed vide Section 185 of the new enactment, being the Electricity Act, 2003. The Forum observes that the instant matter is covered under the Electricity Act, 2003 and the Rules, Regulations and Codes framed thereunder. Further, the ibid Order of the Hon'ble Court is also distinct from the conditions presented before the Forum in the instant complaint, for the simple reason that in the instant complaint MRI data retrieved from the meter exists as evidence. It is also evident from the ibid Order passed by the Hon'ble Court dated 30.06.2014, that the ratio of decision in the Order passed by the Hon'ble Court dated 30.06.2014 is distinct from the conditions presented before the Forum in the instant complaint and therefore Forum is convinced and concludes that the ibid Order dated 30.06.2014 passed by the Hon'ble High Court of Chhatisgarh is not squarely applicable in the circumstances arising in the instant complaint. Issue 2 is decided accordingly.

7 Issue 3: Before the Forum delves on issue 3, it is expedient and necessary to discuss meter and metering equipment - The Forum finds that in the Supply Code, 'meter' and



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'metering equipment' are defined separately but 'meter' is also meant to include metering equipment. Relevant extract of the Supply Code have been reproduced supra. Forum is of the considered view that for the purpose of interpretation of Supply Code, meter and metering equipment may be construed as one. However, for practical purposes, Forum is of the considered view that 'meter' and 'metering equipment' are distinct. Metering equipment is in the nature of Instrument Transformers such as Current Transformer (or CT) and/or Potential Transformer (PT). Under practical conditions, when electrical parameter inputs such as voltages and currents to the meter are within safe limits, metering of a consumer may simply be with a meter and without metering equipment. As has been stated in earlier part of this Order, it is a known fact that the modern-day meters are capable of recording and storing electricity consumption data, electricity supply parameters including various events related to these, which can be retrieved from the meter using an MRI;

- 8 Thus it becomes clear that irrespective of the fact that the meter is with or without recording and storing capabilities and such meter becomes defective, then testing of meter may be the only remedy to estimate or ascertain the quantum of electrical consumption or its accuracy;
- 9 As has already been discussed in para supra, the metering equipment is deployed to give restricted or practically acceptable and safe electrical parameter inputs such as voltage and currents to the meter from an electrical system where these actually exist at excessively high and unsafe levels such as to preclude them from directly inputting into the meter. This is done by stepping down these electrical parameters namely voltages and currents;
- 10 Thus, it further becomes clear that under the condition when metering equipment alone becomes defective and the meter is capable of recording and storing data, then the electricity consumption data and the electricity supply parameters data and events are recorded and stored in the meter, which is available for retrieval using a Meter Reading Instrument (or MRI); (22) In view of the above discussion, the Forum holds that while meter may be capable of recording and storing data, metering equipment does not record or store data and therefore for this practical reason the Forum is convinced that meter cannot include metering equipment. While due to defective metering equipment, data of consumption may not be recorded correctly, however, the meter would still have recorded the event of the missing input electrical parameter, thus establishing the fact of defective metering and also depicting the reasons for defective metering which can be retrieved using an MRI. Thus, for this practical reason also, it becomes evident that meter may not include metering equipment;
- 11 On the basis of foregoing discussion, the Forum is convinced that if the metering equipment alone becomes defective, it may not be necessary to send the meter equipment for Testing to a laboratory for estimating the quantum of unrecorded consumption in the past, unless its accuracy vis-à-vis its accuracy class is either under challenge by the consumer before the distribution licensee or the distribution licensee itself feels the necessity to do so, which is not the case here;
- 12 Thus the MRI data as evidence, is sufficient in helping in estimating or assessing and calculating the quantum of electricity consumption that may have taken place in the past;
- 13 Accordingly, in the instant complaint, the Forum is convinced that because it was the metering equipment which was defective and not the meter therefore, the event of



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missing phase(s) of voltage, would be reflected in the meter and become available for retrieval using MRI and accordingly the meter would not be required to be sent for testing. Testing of metering equipment would only tend to establish its current status and would not help in estimating the quantum of consumption that may have taken place in the past;

- 14 It is also a known electrical fact that there are three (3) voltage phases for a three phase connection. The Forum is of the considered opinion that when one (1) voltage phase from the metering equipment goes missing, the meter tends to record 66.6% (or $\frac{2}{3}$ rd) of actual consumption and when one (2) voltage phases go missing, the meter tends to record 33.3% (or $\frac{1}{3}$ rd) of actual consumption. The estimation of actual consumption in case of defective metering equipment can thus be done on reasonable considerations;
- 15 Record does not lie. This Forum finds from record that the MRI data sheets (Annexure C3), provided to the Complainant along with the Demand Notice (Annexure C1) also placed on record by the Respondent HPSEBL (Annexure R Colly), do indeed reveal defective metering in terms of missing of phases due to defective metering equipment. The events of defective electrical parameter inputs have been recorded and stored in the meter which have become available by way of the MRI data and which clearly depict that voltage phases were missing. The Forum finds that the Complainant has not challenged the correctness of the ibid MRI data. However, it remains undisputed that the meter was not sent for testing and that a check meter was installed. On the anvil of foregoing discussion, the Forum concludes that the fact of MRI data is sufficient evidence to establish that the meter was not defective but the metering equipment was defective and therefore for the purpose of estimating the historic consumption, the meter and metering equipment shall not be required to be sent to laboratory for testing;
- 16 Further, on bare perusal of the provisions of code 4.3.1 and 4.4.1 of the Supply Code reproduced supra, it becomes clear that it is within the licensee's rights to test or get tested the meter including metering equipment installed at the consumer premises which the licensee has rightly exercised by not sending the meter and metering equipment for testing;
- 17 Thus, from the foregoing discussion and for the simple reason that the data necessary for determining the reasons of defect had already become available to the Respondent from the MRI itself which is sufficient evidence, the Forum holds and concludes that it was not necessary for the Respondent to send the metering equipment for testing or for testing it at the site. Further, it was within the Respondent's rights to determine the necessity for the testing of the meter which has rightly been exercised by the Respondent. Issue 3 is decided accordingly.
- 18 Issue 4: The fact is evident from record that the Respondent HPSEBL had installed the Check meter and considered the readings / consumption of this 'Check meter' for the period 23.08.2022 to 03.10.2022 (Annexure R Colly) only to confirm the effect of defective metering revealed by the MRI data of 'original meter' and to calculate and assess the percentage of less recording of consumption in original meter vis-à-vis actual consumption by the Complainant which may have taken place. The Forum is of the considered opinion that this fact of defective metering could no better have been discovered by the Respondent by way of any testing had such testing been undertaken;
- 19 On bare perusal of the provisions of code 4.3.1 and 4.4.1 of the Supply Code reproduced supra, it again becomes clear that it is the responsibility of the licensee to satisfy itself



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with regard to accuracy of the meter. Therefore, the Forum does not find any fault in the action of the Respondent to install a Check meter. The Forum concludes that the action of the Respondent to install a Check meter cannot thus, be held to be illegal or outside the powers of the Respondent to do so. Issue 4 is decided accordingly.

- 20 Issue 5: The Forum is of the considered opinion that actual energy consumption and its metering are two distinct aspects and these two aspects may not at all times be in consonance and there may be disparity between the two at any time, owing to several reasons such as defective meter, defective metering equipment, defective connections, human error intentional or unintentional etc;
- 21 Therefore, in the instant complaint when it is established by way of evidence of MRI data of original meter, further confirmed by the Check Meter data, that there is defective metering and for the simple reason that electricity / energy has actually been consumed in excess of that recorded in the meter in the past, which could not be billed owing to such remaining unnoticed, it can safely be concluded that consumer Complainant is liable to make good any monetary loss that may have resulted to the Respondent distribution licensee in the past. Non-recording or less recording by a meter cannot be a reason to allow free ride to the consumer Complainant for the consumption of electricity that was actually made by it in the past. Therefore, in the case of defective metering, the consumer Complainant is liable to make payments towards the unrecorded part of consumption estimated on reasonable grounds; (34) No one is entitled to adversely use the deficiencies in a system to their advantage, such as to cause loss in any way to the system. Not allowing such loss to be recovered likely results in malpractices and connivances which are detrimental to the system;
- 22 Considering the facts in the instant complaint, depicted by way of MRI data of original meter and the calculations of the Check Meter consumption, this Forum safely concludes that there was defective metering in the past and therefore, the Complainant is liable to pay for the shortfall in billed consumption in the past vis-à-vis actual consumption on reasonable estimates such as that based on percentage of shortfall established from the Check Meter. Forum finds no force in the arguments made by the Complainant that because sub-code 4.4.8(i) of the Supply Code provides for only six (6) months of overhauling of consumer accounts, therefore consumer account can only be overhauled for 6 months. That is the condition when the meter is tested and when there is no evidence by way of MRI data to confirm the same. This is not the condition here. Regulations cannot be read in isolation. In the instant matter sub-code 4.4.8(ii) and 4.4.8(iii) do provide for overhauling of consumer account for the period the meter remained defective and further that the consumer is liable to pay an additional amount. In view of the foregoing discussion, this Forum holds that dispute raised by the Complainant has not been done on valid grounds;
- 23 From the foregoing considered view of the Forum and given the fact that there was defective metering in the past which is evidenced by the MRI data, the Forum safely concludes that the ibid condition of defective metering resulted in non-recording of actual overall consumption of electricity made by the Complainant consumer in the past which could not be recorded then and which the Complainant is now liable to pay for balance of the consumption, on detection of the error / bona-fide mistake by the Respondent HPSEBL. Issue 5 is decided accordingly.



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- 24 Issue 6: In view of foregoing position, once it is settled that there was a metering error, as is evident from the MRI data sheets of the original meter placed on record and the results of the Check meter, the only issue remaining to be decided by the Forum, is whether the Respondent can raise monetary demand as arrears of past period for an error or mistake that occurred in the past and whether Complainant consumer of the HPSEBL is or is not liable to make payments towards the ibid metering error which existed in the past and which went unnoticed being a bona-fide mistake / error and which was later raised vide Demand Notice dated 02.12.2022 (Annexure C1). Forum observes that the Complainant has not challenged the right of the Respondent to raise past period arrears. However, in order to settle the matter, it is imperative for the Forum to delve into this aspect as well-
- 25 After examining the record, facts and settled position of law coupled with provisions of the Electricity Act, 2003 on the matter, it is established that the issue of recovery of past dues of arrears by the DISCOM is no more resintegra, in view of the settled position of law laid by the Hon'ble Apex Court in the matter titled as Assistant Engineer (D1) Ajmer Vidyut Vitaran Nigam Ltd and Anr Vs Rahamutullah Khan alias Rahamjula in Civil Appeal No 1672/2020 decided on 18.02.2020 and M/s Prem Cottex Vs Uttar Haryana Vijli Vitran Ltd in Civil Appeal No7235 of 2009 decided on October 5, 2021;
- 26 In the instant matter, the issue of the monetary demand of Rs 29,70,629/= raised vide Demand Notice dated 02.12.2022 (Annexure-C1), for the period October 2014 to October 2022, it is found that the demand has been raised at the behest of a metering error which existed in the past being a bona-fide mistake / error and which was later noticed by the Respondent and a monetary demand against this was raised vide Demand Notice dated 02.12.2022;
- 27 In the ibid Judgment of the Hon'ble Supreme Court dated 18.02.2020, which refers to other Judgments as well, Electricity has been held to be 'goods' by a constitution bench of the Hon'ble Apex Court in a case titled State of Andhra Pradesh Vs National Thermal Power Corporation Ltd. Further, as also referred to in the Judgment ibid, under the Sale of Goods Act, 1930, a purchaser of goods is liable to pay for it at the time of purchase or consumption and that the quantum and time of payment may be ascertained post facto either by way of an agreement or the relevant statute. It is therefore evident from settled law that while the consumer uses electricity being a good, the distribution licensee charges for this electricity / good at the specified tariffs/ charges of electricity which are determined by the Ld HP Electricity Regulatory Commission (HPERC) vide its Tariff Orders passed in pursuance to Regulations framed under the Electricity Act, 2003. These tariffs / charges are applied to the consumption or goods and thereafter a Bill or monetary demand is raised to the consumer. Thus, Forum is of the considered opinion that the Respondent HPSEBL being a distribution licensee cannot recover any tariff / charges in excess of that specified by the HPERC. At the same time, it is also relevant to mention that the Respondent HPSEBL being a distribution licensee, is bound to recover the cost / price of electricity consumed by a consumer strictly, as per tariffs /charges that are determined and specified by the HPERC vide its Tariff Orders. Accordingly, the consumer is bound to pay for the electricity consumption at the determined tariffs / charges being of statutory nature. These Tariff Orders lay out statutory charges. Any lapse, mistake or bonafide error by the distribution licensee with regard to under recovery of actual tariff / cost / price of electricity, if not recovered from the respective



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consumer, who has availed the goods, may result either in permanent loss to the distribution licensee being a public utility or with the burdening of this utility's loss upon other consumers. Both of these situations or eventualities are bad and against mandated provisions of Tariff Regulations on the matter;

- 28 The Forum finds that the Complainant, without substantiating its dispute with facts and proof, is simply denying the alleged defective metering by simply making arguments which this Forum finds as baseless and not legally tenable. The Forum is inclined to agree with the Respondent that the Complainant is construing the provisions of the HP Electricity Supply Code, 2009 in isolation; \
- 29 In the matter, this Forum holds that the Respondent HPSEBL did make a bona-fide mistake / error in the past by missing to raise statutory amounts in the original Bill arising out of less recording of meter reading due to metering error, which went unnoticed for some time. The Respondent is certainly within his legal rights to raise past arrears or dues of statutory nature, if not discovered earlier due to any mistake as has been held in Hon'ble Apex Court Judgment dated 18.02.2020 in Civil Appeal 1672/2020 while interpreting section 56(2) of the Electricity Act, 2003. However, onus would still lie on the Complainant to show that such arrears have been calculated wrongly or is hit by limitation of 2 years prescribed in ibid section 56(2), which is conspicuously missing on the part of the Complainant. Issue 6 is decided accordingly;
- 30 On aforesaid terms, the Forum does not find force in the complaint No illegality is seen in the monetary demand raised by the Respondent vide Demand Notice dated 02.12.2022 (Annexure C1);
- 31 Once the issues supra framed by this Forum stand settled, Forum further observes that the Complainant has not raised challenge to the correctness of the overhauled account (Annexure C2) based on the MRI data (Annexure C3 / Annexure R) on which the monetary Demand of Rs 29,70,629/= (Annexure C1) is based. However, after examining the record, the Forum prima-facie observes that the overhauling of Complainant account vide Annexure C2 has not been done correctly and it is also not in conformation with the MRI data, if applied, for the entire period of defective metering from October 2014 to October 2022 –
- 32 Firstly, the Forum from examination of record of MRI data (Annexure R) as evidence, prima-facie finds that the original point of the defective metering has only been established by the Respondent from March 2015. The Forum fails to understand as to how the monetary demand has been raised by the Respondent from October 2014. The Forum is therefore constrained to observe that overhauling of Complainant account done on grounds of voltage phase missing vide Annexure C2 can only be from March 2015 and therefore needs to be corrected. In view of this observed position, the Respondent is directed to accordingly correct the monetary Demand worked out / calculated vide Annexure C2 and further to raise the monetary demand only from March 2015;
- 33 Secondly, from examination of MRI data sheets (Annexure R), placed on record as evidence, the Forum prima-facie also finds that during the period from March 2015 to March 2022, against the condition of one phase or two phases of voltage missing, there is actually some voltage being recorded against the missing phase or phases. Though this missing phase voltage may be negligible or small in comparison to the non-missing phase(s), this has to be accounted. Under this condition of some voltage existing against missing phases(s), some consumption is deemed recorded and to this extent, the



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Complainant cannot be charged. From examination of the overhauled account (Annexure C2), the Forum observes that this condition has been completely ignored by the Respondent. The Forum on this count too, is constrained to observe that the overhauling of account of Complainant from March 2015 to March 2022, has not been done correctly and accordingly this needs to be corrected. In view of this observed position also, the Respondent is directed to correct the monetary Demand worked out / calculated vide Annexure C2 and to further raise the monetary demand for the estimated consumption from March 2015 to March 2022 considering therein also the voltage against the missing phase(s);

- 34 This Forum further observes that in majority of complaints, as also observed in this instant complaint, issues of past arrears as monetary demands by the HPSEBL are raised by the complainants in general. These arrears may account for huge multiples of the running bills of the consumer. Such demands of past period arrears may impose hardships upon the consumers on their inability to pay such huge amounts along with the running bills in one go. In this regard, the Forum advises that the Respondent HPSEBL may evolve a suitable mechanism after seeking approval of the HPERC, for mitigating the plight of consumers, who may be oblivious of such huge amounts of arrears accruing or piling against them due to some bona-fide error on the part of the distribution licensee. However, till such time any suitable mechanism is evolved, the Respondent HPSEBL may consider charging an equivalent amount or any multiple of monthly running electricity bill as instalment of arrear in the bill of the Complainant, till such time the total amount of past period arrears are not received. This mechanism can then also justify electricity disconnection for non-payment of electricity bill under section 56 of the Electricity Act, 2003 while also avoiding unnecessary litigation and at the same time mitigating the plight of consumers;
- 35 For reasons as explained foregoing, Respondent is directed to correctly overhaul the account of the Complainant based on the MRI data for the period of defective metering, by recalculating the amount as directed in paras supra. Thereafter, the Respondent is directed to raise a revised Demand Notice along with revised calculation sheet of overhauled account to the Complainant within a period of 10 days from this Order, which the Complainant shall pay within a period of one (1) month from the date of this revised Demand Notice or in accordance with the terms of instalment, as may be allowed by the Respondent;
- 36 On aforesaid terms, the monetary Demand raised by the Respondent vide Notice dated 02.12.2022 (Annexure C1) for Rs 29,70,629/= is partially allowed to the extent as directed in paras supra.
- 37 The complaint is disposed accordingly;
- 38 Parties are left to bear their own costs.
- 39 Order is announced before the parties present today on 29.03.2023 at Shimla in open Forum.

I-Analysis of the Complaint:

1. The case file bearing Complaint No. 1413/4/22/36, dated 20/12/2022, and orders passed on 29/03/2023 by the Consumer Grievance Redressal Forum at Kasumpti have also been requisitioned and gone through.



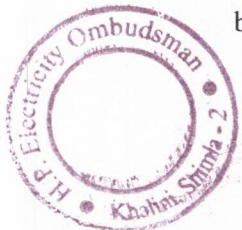
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2. The submissions made by both the parties have also been incorporated in this order in order to have composite view of the entire case.
3. The documents on record, written arguments submitted by the complainant, arguments made by both the parties and judgements of the Hon'ble courts cited by the counsel for complainant 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 submits that it is further alleged in the notice that keeping in view of phase missing, the check metering equipment (CT/PT) are installed on 23/08/2022 to 03/10/2022 to check the accuracy of existing meter.
6. The Complainant submits that it has been further alleged in the notice that the original meter is found 62.5% slow. On the basis of slowness of energy meter, the account of the complainant has been overhauled and less recorded consumption is charged for the amount of Rs. 29,70,629/- w.e.f. October 2014 to October 2022.
7. During the course of hearing the Respondent Board also satisfied the contentions towards very important fact that the old energy meter along with the defective CT/PT were not removed from the site and in addition the new set of meter & CT/PT were installed in parallel to the system to ascertain the differential status of energy being consumed with reference to the faulty one. The Respondent Board has also given its apparent view in the submissions that the purpose of the installation of check meter is only to prove the Phase missing due to defective CT/PT unit. This Appellate Forum is convinced to the extent that the issue of phase missing cannot be sorted out till such arrangement as executed is not made at site.
8. The Respondent Board during averments, on account of this nature of fault where the energy meter is not defective and only CT/PT are defective, showed their reliance on the **Sales Manual Instructions No. 26.4:**
"In case of CT/PT meters where the accuracy of the meter is not involved and it is a case of incorrect connections, defective CTs/PTs, genuine calculation & mistakes etc., charges would be adjusted in favour of the HPSEBL/ consumer as the case may be for the period the mistake/defect continued".
9. The Complainant also submitted different definitions of meter as per Electricity Act 1910, Punjab Electricity Supply code and as per clause 1.2.36 & 1.2.37 of the HP supply code, and asserted that meter and meter equipment are not separate entity but they all are designated as meter and under the ambit of such contentions further submitted that if a meter is found to be beyond the limits of accuracy, it is construed as inaccurate meter and the subsequent account of the consumer is overhauled for the preceding six months as per clause 4.4.8 of the supply code or 12 months as mentioned in one of the judgements of Hon'ble Supreme Court.
10. The counsel for Complainant during arguments showed reliance on Indian Electricity act 1910, 1948 and 1956 and read out relevant clauses in details. The Counsel for Respondent added to the arguments that after the Act 2003 came into existence, the above mentioned Acts under section 185 of 2003 Act stands repealed.
11. The complainant submits that in such circumstance's provisions of 4.4 of the Supply Code will apply. In these circumstances the provisions of 4.4.8 of the Supply Code will be applicable and the consumer's account will be overhauled as per these provisions and it has been specifically elaborated in these provisions that if a meter on testing is found to be beyond the limits of accuracy as specified in the regulations framed by the Authority under



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- Section 55 of the Act, the electricity charges for all categories of consumer will be computed in accordance with the said test results for a period of Six Month immediately preceding.
12. The complainant submits that the provisions adopted by the Respondents regarding the slowness of meters is totally against the provisions of law. It is important to mention here that Abridged Conditions of supply cannot supersede the provisions of Supply Code.
 13. The respondent submits that the demand notice issued to the complainant, is totally within the ambit and scope of the law as such the complaint as preferred by the complainant is liable to be dismissed. The consumer account overhauled on the basis of original meter is found 62.5% slow, since in the present case, there is no involvement of the accuracy of meter and only it is case of defective CT/PT wherein there was missing of phases, which results in slowness of the meter by the value of 62.5 %.
 14. This Appellate Forum after visualizing the impact of the relevant provisions in conjunction which are being read by the Complainant in isolation , conceives that interpretation of relevant provisions / definitions given in Supply Code clause 1.2.36 read with 1.2.37 clearly emphasizes that metering equipment **means set of equipment such as current transformer, potential/voltage transformer, necessary wiring and accessories etc. deployed in conjunction with the meter to measure/record the amount of electrical energy supply.** Further analysis reveals that had the CT/PT been considered as meter as contended by the complainant, it could not have been mentioned in the supply code clause 1.2.37 that they are deployed in conjunction with the meter to measure/record the amount of electrical energy supply. Hence, this Appellate Forum concludes that the averments made by the complainant is just to diverge the attention of this court from the applicable provision/ Instruction No.26.4 of sales manual part-1 which are exactly compatible with the instant matter.
 15. After going through the averments made both by the Complainant and the Respondent Board, one thing is established that there is short assessment due to one reason or the other reason and under such circumstances the action of the Respondent Board in consonance with the Instruction No.26.4 of sales manual part-1 read with relevant supply conditions exercised, is legitimate.
 16. While analyzing the event, reliance of CGRF on the MRI data is also a considered opinion with view point that if MRI data is not given cognizance which is system generated / retrieved / recorded data , the whole purpose of providing such means shall be defeated as this data is an indicative evidence that meter in question was not defective , it was only CT/PT unit deployed in conjunction with main meter in line with Supply code Clause 1.2.37 found defective.
 17. After due analysis of the MRI data by CGRF which this Appellate Forum has also gone through diligently finds that after making comparative study by providing Check meter along with new set of CT/PT by the Respondent Board , it has clearly established that Phase/ Phases as pointed out found missing for the period of dispute March 2015 to March 2022 for which meter was running slow by 62.5% which in the demand note erroneously mentioned October 2014 to October 2022 in place of March 2015 to March 2022 by the Respondent Board as pointed out by the CGRF in the said order dt.29.03.2023 and during arguments the revised calculations as contented by the complainant were also submitted.
 18. CGRF after having detailed analysis has given a mirror clear view that out of the total meter unit, the energy meter was functioning correct and due to defective metering equipment i.e.

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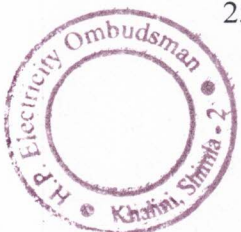


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CTs/PTs causing phase missing, the meter was running slow by 62.5% w.e.f March 2015 to March 2022.

19. After assessing the crux of analysis, this Appellate Forum understands that since, it has been established that energy meter is not defective. It is only the part of metering equipment i.e. CT/PT found defective which had to be authenticated by providing something as check equipment at site and hence in the instant case Clause No.4.4.8 of the supply code read with instruction No.26.1 is not applicable on account of focus on defective CT/PT equipment or connections what so ever the case may be. Hence, application of instruction No.26.4.1 of Sales Manual Part-I at page No.57 under the heading “**CT/PT meters**” is applicable for overhauling point of view.
20. This Appellate Forum after referring to the MRI data which clearly provides the number of days/ months, the complainant had been enjoying by paying less by app 62.5% with the same connected load whereas, he was supposed to pay more, had the deployed part of the meter as per clause 1.2.37 of supply code i.e CT/PT could have been healthy.
21. This Appellate forum is convinced after making detailed analysis of the MRI data as well as findings of the Consumer Grievance Redressal Forum at Kasumpti which may also be considered as part and parcel of this analysis, clearly reveals that MRI data has provided a microscopic view of the disputed period, the consumer has consumed the power which is from March 2015 to March 2022 or October 2014 to October 2022 whichever subject to further authenticity / corrections by the Respondent Board.
22. This Appellate forum without any doubt infers that since MRI data as an authentic proof establishes that the short assessment attributes to the whole period of dispute, the reliance on clause No.4.4.8 of supply code which provides overhauling for preceding six months only, construes futile. Hence, the applicability of the clause No. 4.4.8 of the supply code does not stand in the instant matter when it is established that the meter is not defective only the deployed part in conjunction with the meter i.e CT/PT is defective.
23. The above clarity / analysis is apparent from the record submitted by the Respondent Board. This court is not convinced with the submissions made by the Complainant on the issue that their dependability on Act/Supply code in the instant matter is legal and on the other hand the Respondent relying upon the Sales Manual Instructions / conditions of supply is illegal.
24. This Appellate Forum further infers that the complainant is relying on the judgement of Hon’ble Chhattisgarh High Court whereas this Appellate Forum agrees with the findings of Consumer Grievance Redressal Forum at Kasumpti under para 17 of their order dt .29.03.2023 in complainant 1413/4/22/36 , where clearly mentioned that the above order of the Hon’ble High court is in terms of Indian Electricity Act 1910 which stands repealed vide section 185 of the new enactment ,being the Electricity Act 2003. Hence, this Appellate Forum shall not further go in depth on this issue and takes the cognizance of Consumer Grievance Redressal Forum at Kasumpti findings which may be considered as part and parcel of this part of Analysis.
25. This Appellate Forum is of the clear view that Conditions of the supply are categorically mentioned in the Sales Manual Part-I as “**Applicable to consumers of HPSEBL**” and M/S



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Kusum Gupta & Associates Through Sh. Chander Prakash Gupta being one of the consumers of HPSEBL are under the contractual obligations to adhere to Sales Manual Instructions /Conditions of supply whatsoever applicable in terms of specific clause of A&A form placed on record by the Respondent Board during arguments ,the relevant part of para of which is reproduced as under:

"----- I/We hereby further agree to pay for the said supply in accordance with the relevant tariff and also to pay for all such charges as may become due by me /us to the supplier from time to time at rates laid down in the schedule of General & Service Charges prescribed by the supplier and I/We further agree that I/We will , if and when required by the supplier to do so , lodge with the Local Office of the Electricity Board a deposit calculated as per the conditions of supply, including schedule of tariff & General & Service Charges have been perused be read to me /us and I/we agree to be bound by them and by the provisions of electricity Act and of the Rules made there under , as may be applicable."

26. On further examining the above provisions and contractual bindings, this Appellate Forum is of the considered opinion that along with the Acts and Supply Codes, the consumer under the ambit of above agreement till it is declared defunct, cannot absolve himself from the responsibilities of mandatory compliance to the Instructions/ Conditions of supply issued or to be issued from time to time by the (supplier) Respondent Board.
27. Hence on further analysis, this Appellate Forum deuces that under the ambit of such provisions and seeing its applicability in the instant case where meter is not defective , only metering equipment CT/PT found defective or if not their connections might be wrong , exercising the provision/ Instruction No.26.4 of sales manual part-1 as well as requisite supply conditions of the supply , the action taken by the Respondent Board is not a wrong step and in consonance with the the provisions/ Instruction No.26.4 of sales manual part-1 of supply which are meant for exercising by the concerned one under such circumstances of disputed period ,is not an illegal step.
28. This Appellate Forum further infers that so long as the "Manual of Instructions/ Conditions of Supply" prevail being part and parcel of the agreement and not declared defunct by any authority, the application of such conditions cannot be stopped and treated as illegal and the officer concerned has full right to function in consonance with such provisions / conditions which are also statutory one.
29. After going through the averments made both by Complainant and Respondent in their submissions and additional documents submitted during arguments, this Appellate Forum is convinced that it cannot give up the spirit of Supply Code 2009, Instructions of Sales Manual Part-1, Conditions of Supply as the Complainant / Consumer is under contractual obligation as per the A&A form in conformity to the Conditions of Supply submitted by the Respondent Board in support of their arguments and these conditions are still operative.
30. After making analysis diligently, this Appellate Forum without any doubt, is of the considered opinion that the following points are well established prepositions:
 - a. That the meter is healthy which is provided with the facility of recording and registering the events and in the instant case the MRI data retrieved has provided clarity for the number of default days and the quantum of less power, the complainant had been consuming against the same connected load.
 - b. That once, when it is amply clear about the status of number of days and quantum of power consumed during these short assessment days against the same connected load,



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this Appellate Forum is fail to understand that why the overhauling of the accounts be confined to six months or twelve months instead of full period of less consumption as established by the MRI data, during short assessment period.

31. Further analysis on the provisions read in conjunction i.e The Supply Code clause 1.2.36 read with clause 1.2.37 , Instruction No.26.4 of Sales Manual Part-1 as well as supply condition provides convinced picture to this Appellate Forum that all these referred provisions being still operative and existence of contractual obligation of the Complainant with the Respondent Board , establishes the fact that the demand raised by the Respondent Board is legitimate in principal subject to further corrections in the period of dispute.
32. This Appellate Forum concludes that the complainant / consumer consumed the energy against the same connected load placed on record which remained same as per the arguments of the Respondent Board during the disputed period as well as during the period when check meter was installed , clearly establishes that had there been no fault in the metering equipment, the bill could have been higher which is accounted for now by raising the differential bill/demand notice thereof.

J- Issues in Hand:

Issue No.1:

Whether CT/PT(metering equipment) is also meter or part of meter?

Issue No.2:

Whether the meter is also considered defective even if the metering equipment i.e. CT/PT or wiring is defective.

Issue No.3:

Whether Sales Manual Part-1 Instructions as well as Supply Conditions are invalid?

Issue No.4:

Whether clause 4.4.8 of the supply code is applicable in the instant case?

Issue No.5: Whether the justice warrants overhauling for preceding six months or twelve months or full period of dispute March 2015 to March 2022 (subject to corrections if required)

Issue No6:

The Judgements of Hon'ble Courts the complainant is referring to.

K-Findings of the Issues:

Issue No.1:

1. Whether CT/PT (metering equipment) is also meter or part of meter, is a very vague preposition as different definitions have been given in the different electricity Acts and codes. Even the judgements cited by the counsel for complainant have extracted different meanings on the combination of meter when functions in conjunction. The counsel for complainant during arguments emphasised that the whole unit is designated as meter and when any of the part becomes defective, the meter is regarded as defective/inaccurate one or damaged one whereas, both counsel for respondent and officers appearing on partial and final arguments put forth their contentions that both meter and CT/PT(metering equipment) are different owing to have different nature of functions i.e meter records /registers energy consumption whereas metering equipments such as PTs steps down voltage to the required value to facilitate energy meter to record.



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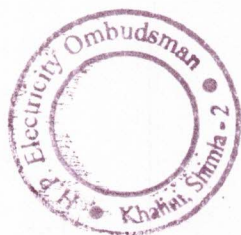
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2. CGRF in its findings on the functioning of the CT/PT, has deliberated in details i.e. they are attached with meter for stepping down current and voltage to the required level to facilitate meter to accept and measure energy consumption thereof.
3. After summing up the arguments, submissions, deliberations of the counsel for complainant on different judgements of both Hon'ble Supreme court and Hon'ble High Courts and detailed addressing of Acts and Codes, this Appellate Forum giving due cognizance to the proceedings of Hon'ble Courts, deduces that when the energy meter is functioning in conjunction with metering equipments such as CT/PTs, it may be designated as integrated unit where CT/PT is also considered as a part of meter with different functions but not meter.
4. This Appellate Forum is convinced with the arguments of The Counsel for Respondent that after the enactment of the Act 2003, the Acts such as 1910, 1948 and 1956 under section 185 of 2003 Act stand repealed. Under such privilege, this Appellate Forum feels it proper to refer to the definition of Meter under clause 1.2.36 read with 1.2.37 of the Supply Code 2009 published by Himachal Pradesh Electricity Regulatory Commission in terms of powers under section 50 of the Electricity Act 2003 which clearly provides:
 - a. **1.2.36 "meter" means and includes metering equipment or a set of integrated instruments used to measure /record singularly or combined electrical parameters including electrical energy and electrical power both in kWh / kVAh during a given period.**
 - b. **1.2.37 "metering equipment" means set of equipment such as current transformer, potential/voltage transformer, necessary wiring and accessories etc. deployed in conjunction with the meter to measure/record the amount of electrical energy supply.**
5. This Appellate Forum after analyzing all above references and contentions, appends findings on Issue-1 as under:
 - a. that had the CT/PT been considered as meter as contended by the complainant, it could not have been defined separately in the supply code clause 1.2.37 in addition to clause 1.2.36 that they are deployed in conjunction with the meter to measure/record the amount of electrical energy supply.
 - b. Since, they are deployed in conjunction with the energy meter to perform certain functions, they are definitely a part of meter but not meter.

Issue No.2:

1. Whether the meter is also considered defective even if the metering equipment i.e. CT/PT or wiring is defective. The above findings on issue no 1 paves the way for delving findings on Issue No.2. Since, within the ambit of above findings of Issue-1, it is established that CT/PT (metering equipment) are a part of meter but not meter, further establishes that if CT/PT are defective and meter is healthy, then the meter shall not be considered defective.
2. This Appellate Forum after observing the above findings in conformity with the instant case, where MRI data submitted by the Respondent Board for the period of dispute on different instances of time when one phase was missing or two phases were missing due to fault in PT unit but the energy consumption pattern got recorded in all the events by the energy meter, substantiated austerly of the findings, clearly concedes and affixes that if the metering equipment such as CT/PT, wiring etc., is defective which are the part of



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meter and the meter is registering the events and energy consumption as in the instant case, the meter may not be considered defective. This gives findings on IssueNo.2.

Issue No.3:

1. Whether Sales Manual Part-1 Instructions as well as Supply Conditions are invalid? This Appellate Forum conceives from above arguments that the conditions of the supply are categorically mentioned in the Sales Manual Part-1 as **"Applicable to consumers of HPSEBL"** and the Complainant is one of the consumers of HPSEBL is under the contractual obligations to adhere to Sales Manual Instructions / conditions of supply, whichever applicable. The same was substantiated by the Respondent Board on placing of A&A form on record (**Application & Agreement form**) during arguments, the relevant extract of A&A form executed/ signed by the Complainant is reproduced as under:

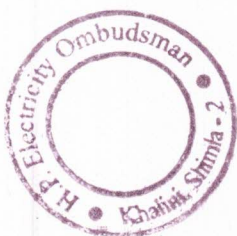
"----- I/We hereby further agree to pay for the said supply in accordance with the relevant tariff and also to pay for all such charges as may become due by me /us to the supplier from time to time at rates laid down in the schedule of General & Service Charges prescribed by the supplier and I/We further agree that I/We will , if and when required by the supplier to do so , lodge with the Local Office of the Electricity Board a deposit calculated as per the conditions of supply, including schedule of tariff & General & Service Charges have been perused be read to me /us and I/we agree to be bound by them and by the provisions of electricity Act and of the Rules made there under , as may be applicable."

2. On further examining the above provisions and contractual bindings, this Appellate Forum asserts that along with the Acts and Supply Codes, the consumer under the contractual obligations of above agreement till it is declared defunct, cannot absolve himself from the responsibilities of mandatory compliance to the Instructions/ Conditions of supply issued or to be issued from time to time by the (supplier) Respondent Board and in the judgement process , this Appellate cannot overlook the only and the only document signed by the Complainant at the time of taking connection in the form of **Application & Agreement** form as a contractual binding to adhere to supply conditions in addition to Act and Supply Codes .
3. This Appellate Forum adds to the findings that so long as the Sales Manual Part-1 Instructions/conditions of supply are incorporated as contractual bindings in A&A form, the application of such conditions cannot be considered as ceased and treated as illegal and further the Complainant/ Consumer are committed to adhere to such provisions & obligations and this Appellate Forum holds that the officer concerned has full right to function in consonance with such provisions / conditions which are also statutory one. This gives findings on Issue-3.

Issue No.4:

This Appellate forum is convinced after making detailed findings on the Issue-1 to 3, availability of MRI data read with the findings of the Consumer Grievance Redressal Forum at Kasumpti which may also be considered as part and parcel of these findings, clearly divulges as under:

- a. That MRI data is a conclusive proof of having consumed less quantum of energy against actual consumption during the period of dispute and further provided that the meter is healthy which is capable of recording and registering the events and in the instant case the MRI data retrieved has



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provided clarity of the number of default days and the quantum of less power, the complainant had been consuming during the period of dispute and enjoying full amenities at the cost of Respondent Board by paying less .

- b. That MRI data has provided a microscopic view of the exact period of dispute which are March 2015 to March 2022 or October 2014 to October 2022 subject to further authenticity / corrections by the Respondent Board and the quantum of less power consumed during the said period.
- c. That in view of above findings, this Appellate forum is of the considered view that since the following are established, the applicability of the clause No. 4.4.8 of the supply code does not hold good in the instant case:
 - i. The quantum of less power consumed against the same connected load by the complainant during the period of dispute substantiated with the MRI data placed on record by the Respondent Board.
 - ii. That the meter is not defective , only the deployed part in conjunction with the meter i.e. only PT out of CT/PT is defective.

This closes the findings on issue -4.

Issue No.5:

After resorting to findings on the Issues-1 to 4 and going through the judgements of Hon'ble Courts, placed on record by the counsel for Complainant during arguments, this Appellate Forum is of the considered opinion as under that the instant matter is governed by its own applicable statute and merits on account of the following findings:

1. That it has been established that the meter is not defective, the only so-called part of meter, the metering equipment as per clause 1.2.37 of supply code is defective i.e. PT unit of CT/PT.
2. That the MRI data has provided clear view of less power recorded during the said period of fault and established that the energy was consumed in the past due to defect in the metering equipment related to phase missing resulted in less bill was raised during the period March 2015 to March 2022 and in view of the authentic status provided by the MRI data, the consumer is liable to pay for the differential demand raised by the respondent for the whole period of dispute. Had it not been established / assessed regarding the state of consumption pattern, then as contended by the complainant, the meter could have been considered inaccurate or faulty and the differential bill could have been raised only for a specific period of preceding months as applicable as per provisions.
3. That due to precise registering / retrieving of MRI data during events, the status of energy meter cannot be construed as Inaccurate Meter.
4. That in view of the fact that the meter is not defective, clause 4.4.8 of the supply code is not applicable and MRI data is a conclusive proof of having consumed the



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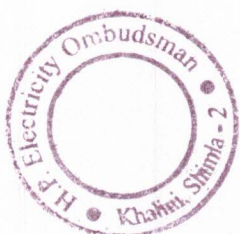
quantum of energy by the complainant during the period of dispute and the differential bill raised for the period of dispute on short assessment is legitimate.

5. That the instant matter is governed in terms of statute of Hon'ble HPERC being universal for Licensee as well as consumer of the state and the settlement warrants for the whole period of short assessment subject to corrections at Respondent's end if required.
6. That this Appellate also upheld the findings of CGRF under above para -29 of order dt. 29.03.2023 that the Respondent is certainly within his legal rights to raise past arrears or dues of statutory nature, if not discovered earlier due to any mistake as has been held in Hon'ble Apex Court Judgment dated 18.02.2020 in Civil Appeal 1672/2020 while interpreting section 56(2) of the Electricity Act, 2003. However, onus would still lie on the Complainant to show that such arrears have been calculated wrongly.
7. That reference be again made to the findings of CGRF under para- 27 above which provides that the Judgment of the Hon'ble Supreme Court dated 18.02.2020, which refers to other Judgments as well, Electricity has been held to be 'goods' by a constitution bench of the Hon'ble Apex Court in a case titled State of Andhra Pradesh Vs National Thermal Power Corporation Ltd. Further, as also referred to in the Judgment ibid, under the Sale of Goods Act, 1930, a purchaser of goods is liable to pay for it at the time of purchase or consumption and that the quantum and time of payment may be ascertained post facto either by way of an agreement or the relevant statute. It is therefore evident from settled law that while the consumer uses electricity being a good, the distribution licensee charges for this electricity / good at the specified tariffs/ charges of electricity which are determined by the Ld HP Electricity Regulatory Commission (HPERC) vide its Tariff Orders passed in pursuance to Regulations framed under the Electricity Act, 2003.

This gives findings on Issue-5

Issue No.6:

1. After having detailed view of all averments made by both the parties, arguments, references to the judgements and relevant provisions, without any doubt this Appellate concludes:
 - a. that CT/PT is a part of meter deployed in conjunction with meter but not meter when clause 1.2.37 of the Supply code 2009 is read with clause 1.2.36 and not in isolation as is seen by the complainant in the instant case.
 - b. In the instant matter it has been established that the meter is not defective as the MRI data has established the quantum of short assessment during the said period and the metering equipment (CT/PT) which as per clause 1.2.37 read with 1.2.36 deployed in conjunction with main meter is defective, does not construe the contentions that the meter is "inaccurate".
 - c. That in view of findings at "a" read with findings "b" above, it is quite legitimate to say that the overhauling of the accounts of the consumer warrants for the whole period of dispute i.e March 2015 to March 2022 subject to any further corrections by the Respondent Board.
 - d. That this Appellate shall not go further in depth on this issue and takes the cognizance of Consumer Grievance Redressal Forum at Kasumpti findings also



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which may be considered as part and parcel of the findings of this Appellate Forum.

- e. That this Appellate Forum is convinced with the arguments of the Counsel for Respondent that after the enactment of the Act 2003, the Acts such as 1910, 1948 and 1956 under section 185 of 2003 Act stand repealed and the same contention is cited in the order of Consumer Grievance Redressal Forum at Kasumpti also while giving findings.
- f. In the judgement of Civil Court Cases 2015 Volume 1 page 106 (Chhattisgarh) referred by the counsel for complainant, one important fact supporting the judgement process of this Appellate has been brought out under para- 9: *"the register of the meter shall, in the absence of fraud, be conclusive proof of such amount or quantity."* Similarly, in the instant case also the MRI data has established the quantity of short assessed during the period when fault persisted.
- g. The other important fact of the above judgement under para-9 which is *"where the meter has in the opinion of such Inspector ceased to be correct, such Inspector shall estimate the amount of the energy supplied to the consumer or the electrical quantity contained in the supply, during such time, not exceeding six months"*. Whereas in the instant case the meter is functioning and MRI data has established the quantity consumed during the period of dispute, over rules the contentions as argued.
- h. In the judgement the Hon'ble Supreme Court of India given its verdict in 2016(1) Civil Court Cases 819 Supreme Court. referred by the counsel for complainant. After going through in depth, this Appellate Forum conceives very important fact which appears under para-5 page 820 of the judgement *"When the meter at the premises of a consumer is reported to be Non-Functional and there is a short assessment for a long period, the bills can be revised for that period but limiting to twelve months."* Whereas in the instant case as submitted by the Respondent, the meter is healthy and not Non-Functional. As such in view of the circumstances as put forth through submissions, arguments by both the parties, in the opinion of this Appellate, this proposition does not apply.
- i. Counsel for Complainant added CGRF Punjab State Power Corporation Ltd. judgement in the Case No. CF-046/2023 in the matter M/s Agarwal Roller Flour Mills Syedwala, Abohr Vs Punjab State Power Corporation Ltd. After scrutiny of the contents of the said judgement and proceedings, this Appellate Forum observed that the said case was of defective meter and burnt CT/PT unit as extracted from the report of ASE /Enf. Cum EA & MMTS, Sri Mukatsar Sahib as per ECR No.9/2644 dt. 19.10.2022, the relevant extract at page 13 of the report placed on record by the Counsel for Complainant is reproduced as *"it was directed that CT/PT unit be changed immediately along-with the meter as its scroll was defective."* This clearly shows that after inspection both meter and CT/PT unit found defective, is not the similar case as in the instance case, meter is healthy as per submissions of the Respondent Board, metering equipment CT/PT is showing phase missing and the MRI data stands retrieved for the whole period. Hence not viable.

This gives findings on Issue-6



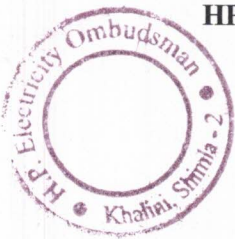


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L-Order:

1. The order passed on dated 29/03/2023 by the Consumer Grievance Redressal Forum at Kasumpti in Complaint No. 1413/4/22/36, dated 20/12/2022 is upheld.
2. The Demand note dt.02.12.2022 for Rs. 29,70,629/- raised by the Respondent Board is sustained in principal subject to further following necessary corrections before raising final Demand Note:
 - a. Check and Ensure the status of connected load /contract demand with reference to as mentioned in the Test Report. Any variation thereof be brought to the notice of Complainant as per provisions before imposing any additional penalty in terms of Contract Demand Violation charges as contested by the Counsel for Complainant during arguments and agreed by the Counsel / Representative of the Respondent Board.
 - b. In the monetary demand, necessary corrections be made in the period which is March 2015 to March 2022 in place of October 2014 to October 2022 as pointed out by Consumer Grievance Redressal Forum at Kasumpti in its above order as well as the Complainant during arguments and agreed by the Respondent Board.
3. The Respondent Board in terms of above mandate is directed to prepare fresh demand after due incorporation of above corrections within fifteen days from the date of issue of this order and raise fresh Demand note positively by 30.10.2023 as per prevalent provisions.
4. The complainant is directed to pay the requisite outstanding amount within 30 days after the respondent Board raises fresh/ revised demand to avoid any action by the Respondent Board as per the provisions thereof.
5. The Respondent board is further directed not to take any coercive action before the expiry of above period after raising the fresh demand.
6. All stays imposed by this Appellate Forum under Regulation 36 of Himachal Pradesh Electricity Regulatory Commission (Consumer Grievances Redressal Forum and Ombudsman) Regulations, 2013 are hereby vacated.
7. The Complaint filed by M/S Kusum Gupta & Associates Through Sh. Chander Prakash Gupta, S/O Sh. Murari Lal Gupta, o/o Village Nagli, Oachghat, Tehsil & District Solan, HP-173223. is hereby disposed off.

Given under my hand and seal of this office.



Prakash
13/10/2023
Electricity Ombudsman