



HIMACHAL PRADESH ELECTRICITY OMBUDSMAN
SHARMA SADAN, BEHIND KEONTHAL COMPLEX, KHALINI, SHIMLA-171002
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Case No. 33 of

2017

In the matter of:

M/s Kundlas Loh Udyog, Village Balyana, P.O.Barotiwala, Tehsil Baddi, Distt. Solan (HP)-174103, through its authorized representative Shri Rakesh Bansal.

....Applicant/Representationist

Versus

1. Executive Director (Personnel), H.P. State Electricity Board Ltd., Vidyut Bhawan, Shimla-4(HP)
2. Assistant Engineer, Electrical Sub Division, HPSEBL, Barotiwala, Distt.Solan(HP)
3. Executive Engineer, Electrical Division, HPSEBL, Baddi, Distt. Solan (HP)

Presence:

Sh. Rakesh Bansal, authorised Representative for the Applicant/Representationist
Sh. Bhagwan Chand, Advocate for the Respondents

Order

(Last heard on 11.10.2017)

M/s Kundlas Loh Udyog, Village Balyana, P.O.Barotiwala, Tehsil Baddi, Distt. Solan (HP)-174103

(hereinafter referred to as "**the Applicant/Representationist**") is availing electricity supply on Large Supply (EHT) against Account No.1122208426, from the H.P.State Electricity Board Ltd. (hereinafter referred to as ("**the Respondents Board**") through Electrical Sub Division, Barotiwala, District Solan (HP).

Complainant's contention

1. The respondents charged the late payment surcharge Rs.2,03,249/- @ 2% for late payment of bill by two days thus increasing the amount further to Rs.2,07,314/-. The surcharge rate of 2% have been notified by the H.P. Electricity Regulatory Commission vide their Tariff Order for the year 2015-16 for a period of one month, whereas surcharge of 2% has been charged by HPSEBL for the delay of two days. The

surcharge should have been charged only for 2 days on pro-rata basis and should have been calculated as follows:-

a) Calculation of the respondents:

Amount for fully month excluding taxes and duties x2%

i.e. Rs.1,01,62,472 x2/100 = **Rs.2,03,249/-**

b) Calculation of the applicant

Amount of full month excluding taxes and duties x2%xTime of delay

i.e. Rs.1,01,62,472 x 2/100x2 days/30 days= Rs.2,03,249 x 2/30 = **Rs.13,550/-**

The rate of 2% is for the month not for two days, which is the contention of the complainant in this complaint.

2. The complainant is aggrieved against the impugned order dated 21.03.2017 passed by the CGRF in complaint No.1453/3/16/025 is bad in law and is liable to be quashed and set aside as it is against the in support of misinterpreted language of the relevant provision of the Tariff Oder, which speaks "Late Payment Surcharge (LPS) for late payment shall be levied @ 2% per month or part thereof, on the outstanding amount excluding electricity duty/taxes for all the consumer categories."

The language 2% per month does not mean that 2% will be charged even if the delay is for a few days less than a month, banks charge interest at a per annum rate, but they apply it on pro-rata basis on the balances as well as the period. The delay in payment beyond the due date has to be compensated, but the surcharge/interest has to be commensurate to the default or delay.

3. That the appellant/complainant company had filed appeal before the District Consumer Dispute Redressal Forum, Solan, against the order dated 21.03.2017 passed by the FRGC of HPSEB Consumers in Complainant No.1453/3/16/025 in complaint titled as Kundlas Loh Udyog Vs. HPSEBL and others, which has been returned by the Forum with liberty to approach the appropriate Forum as the Forum has held that the Complainant does not fall within their jurisdiction owing to the fact that the complainant cannot be covered under definition of a consumer. Hence, the present appeal. The final order was passed in the Complaint on 21.03.2017 by the CGRF of HPSEBL Consumers and was decided on 07.06.2017 by the District Consumer Disputes Redressal Forum, Solan. Thus, the appeal is being filed within the period of limitation as the matter was before another Court before approaching the Ombudsman.

Respondent's contention:

1. That the contents of Para No.1 of the representation needs no reply being matter of record.
2. That the contents of Para No.2 of the representation are admitted to the extent that the respondents has issued monthly energy bil amounting to Rs.1,14,29,255/- to the appellant for the billing period April,2016. This bill was required to be deposited by the appellant till due date of 19.04.2016 by cheque and 20.04.2016 by cash without levy of surcharge. After due date the billed amount required to be paid was Rs.1,16,32,504/- including surcharge @ 2% of the total amount. The appellant deposited an amount of Rs.1,12,89,777/- through Cheque on 19.04.2016. The same cheque was dishonoured on 22.04.2016 for want of insufficient fund. Thereafter the appellant deposited this amount through RTGS on 22.04.2016. The rest of the contents of this para is totally false, incorrect, wrong and as such are denied. That the content of para 2 of the representation are admitted to the extent that the respondents levied surcharge of Rs.2,03,249/- because of the reason that the appellant failed to deposit the payment of energy bill within the stipulated period as prescribed in the energy bill. The surcharge has to be charged on the basis of tariff order for whole amount as depicted in the energy bills. In the present case the respondents have rightly levied the surcharge from the appellant as per the provision of law. The plea taken by the appellant is totally unreasonable and against the provisions of law. The appellant is wrongly interpreting late payment surcharge. The part thereof stands for the unpaid amount pending after the passage of due date. Late payment of surcharge @2% shall be applicable for amount left to be paid after due date, even if the, delay is for one day or of full month. The procedure for calculation adopted by the appellant is not applicable in the present case.
3. The contents of Para No.4 of the representation needs no reply being matter of record.

Forum's observations and Order:

1. It was responsibility of the complainant to keep its account sufficiently funded to avoid cheque bounce. The credit of amount in the account of respondents account by the bank is the internal matter of respondents.
2. Complainant company is wrongly interpreting Late Payment Surcharge. The "part thereof" stands for the unpaid amount and not for the delay in number of days till the outstanding is cleared. The LPS of 2% shall be applicable for the amount left to be paid after due date, even if, the delay is of 1 day or of full month. This Forum however does not agree with the above explanation of the respondents.

3. Complainant as per its own submission in para No.8.4 of complaint submitted that it made the payment on dated 22.04.2016 i.e. 2 days after the due date of cash and thus is fully liable for Late Payment Surcharge.
4. Complainant company interpretation of calling LPS as "Surcharge on Surcharge" wrong. The outstanding amount so payable including the surcharge shall attract minimum LPS @ 2% in next month and subsequent months.
5. We have gone through the various judgement quoted by the complainants and specially the judgement of Karnatka High Court dated 06.11.1998 M/s Shimoga Steel Ltd. Vs. Karnatka Electricity Board and find that in this particular judgement, the provision in the Regulation was for levy of simple interest for belated payments at the rate of 2% per month or part thereof from the expiry of due date. In this case the Hon'ble High Court has decided to levy interest @ 2% per month for the actual period of delay in making the payment. We do not find this case identical with the present case.
6. Regarding issue of surcharge over surcharge, this Forum feels that to levy surcharge over surcharge is not justified at all. Because late payment surcharge can be even for three or more months, but the energy bill may be issued every month. The outstanding amount does not include surcharge. The surcharge is calculated for the period of delay in terms of per month or part thereof on the date of making the payment. This can be better understood from following example. Let the bill amount is Rs.5,00,000/- and the payment is made after 03 months and 10 days. As per respondent Board's practice and as per the opinion of this Forum, the surcharge @ 2% per month or part there of shall be as under:-

S.No.	Period	2% Surcharge as per HPSEBL Practice	2% Surcharge as per Opinion of this Forum
1.	Within one month.	Rs.10,000	Rs.10,000
2.	After 01 month and within 02 months.	Rs.10,000+Rs.10,200 =Rs.20,200	Rs.10,000+Rs.10,000 =Rs.20,000
3.	After 02 months and within 03 months.	Rs.20,200+Rs.10,404 =30,604	Rs.20,000+Rs.10,000 =Rs.30,000
4.	After 03 months and within 04	Rs.30,604+10,612 =Rs.41,216/-	Rs.30,000+Rs.10,000 =Rs.40,000

	months.		
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So by levying surcharge over surcharge the Respondent Board is charging LPS of Rs.41,216/- in place of Rs.40,000/- which is not correct as shown in this particular example.

In view of the above discussion and observations, we feel that the Respondents Board is right in levying 2% LPS even for part of a month. The respondents Board is not justified in levying surcharge on surcharge. We thus direct as under:-

- (1). The respondents may revise its LPS bill according to above discussion and surcharge over surcharge should not be levied.
- (2). All the amounts already paid by the complainant on the directions of this Forum be adjusted against the payment due.
- (3). These directions shall be prospective and would not in any way affect the already settled claims of the consumers.

The case is decided partly in favour of complainant and partly in favour of respondents.

Electricity Ombudsman findings and Order:

First and foremost issue comes for discussion whether 2% surcharge on late payment to be levied for a month or number of actual days of delay on pro-rata basis after due date is correct and justified or not.

On going through the definition of Late Payment surcharge, it is amply clear that "Surcharge for late payment shall be levied @ 2% per month or part thereof on the outstanding amount excluding electricity duty/taxes for all the consumer categories". The "part thereof" stands for the unpaid amount and not for the delay in number of days till the outstanding is cleared. The LPS @ 2% shall be applicable for the amount left to be paid after due date, even if the delay is of 01 day or for full month.

After going through the judgement of Karnatka High Court dated 06.11.1998 in case of M/s Shimoga Steel Ltd. Vs. Karnatka Electricity Board quoted by the complainants, we finds that in this judgement the provision in the Regulation was for levy of simple interest for belated payments @ 2% per month or part thereof from the expiry of due date and the High Court has decided to levy

interest @ 2% for the actual period of delay in making the payment. Thus, we do not find this case identical with the present case, because while deciding the matter concerning the consumer grievances, mostly we invoke the provisions laid down in the Regulations and Tariff orders approved by the H.P. Electricity Regulatory Commission, Sales Manual of HPSEBL and Electricity Act,2003. As a result the 2% surcharge levied by the respondents Board on Late Payment of Bill is correct and justified.

As for as issue of levy of surcharge over surcharge is concerned, it is not justified at all. The outstanding amount does not include surcharge. The surcharge is calculated for the period of delay in terms of per month or part thereof on the date of making the payment of actual billed amount. This can be better understood from the example illustrated above by the CGRF.

In view of the arguments putforth by both the parties during the last hearing, discussions and above facts, I found that the levying of surcharge @ 2% on the late payment of bill amount by the respondents Board is correct and justified. However, the levy of surcharge over surcharge by the Board, as noticed in the instant case is unjustified and incorrect.

Dated: 23.10.2017

ELECTRICITY OMBUDSMAN