

BEFORE THE HARYANA ELECTRICITY REGULATORY COMMISSION

BAYS No. 33-36, SECTOR-4, PANCHKULA- 134112, HARYANA

Case No. HERC/PRO – 8 of 2019

DATE OF HEARING : 18.07.2019

DATE OF ORDER : 23.07.2019

IN THE MATTER OF:

Application cum Petition under section 94 of the Electricity Act, 2003 and Regulation 5.5 of the HERC (single point supply to Employers Colony, Group Housing Societies and Residential or commercial complexes of Developers) for Redressal of Grievances.

Petitioner

Rajiv Malhotra, 1401 Tower 6, Vipul Belmonte, Golf Course Road, Sec.-53, Gurugram

V/s.

Respondent

1. M/s Vipul Ltd., Vipul Tech Square, DLF Phase-5, Sec.-43, Gurugram.
2. Vipul Belmonte, Apartment Resident Association, Golf Course Road, Sec.-53, Gurugram.
3. Mr. Rahul Dadheech, Manager in-charge, Cushman & Wakefield Ltd., Sec.-53, Gurugram.
4. The Chairman-cum-Managing Director, DHBVNL, Vidyut Sadan, Vidyut Nagar, Hisar.

PRESENT

On behalf of the Petitioner:

Shri Rajiv Malhotra appeared on hearing held on 9/05/2019

On behalf of the Respondent:

1. Smt. Pooja Aganpal, Advocate, Respondent -2
2. Shri Sachin Yadav, XEN, DHBVN

QUORUM

Shri Jagjeet Singh, Chairman

Shri Pravindra Singh, Member

Shri Naresh Sardana, Member

ORDER

Brief Background of the Case

1.1. The Petitioner has submitted that:

- a) He is a Resident and Owner of Apartment 1401, Tower 6, Vipul Belmonte, Golf Course Road, Sector 53, Gurgaon and there are 312 apartments and 56 EWS flats in the complex and it is administered by VBARA Society [Respondent No. 2] through C&W [Respondent No. 3]
- b) The Complex was administered till 2015 by M/s Vipul Limited [Respondent No. 1] and was taken over by VBARA [RWA] Respondent No. 2 in Jan-Feb 2015.
- c) The condominium has a single Point Electricity Supply provided by DHBVN [Respondent No. 4] and Respondents No. 2 & 3 of the Society are responsible for metering, reading, billing and collection of electricity dues thereof from residents/owners/tenants/users of society complex.
- d) Aggrieved by high handedness, arbitrariness in billing and raising wrongful charges and threatening Petitioner, by Respondents No. 2 & 3, the Petitioner approached DHBVN for resolution but not getting response has preferred this petition, as VBARA and C&W [Respondent 2 & 3] are not adhering to Haryana Electricity Regulatory Commission Regulations 2013.
- e) The Respondent No. 1 got single point connection under bulk supply [Domestic]category from DHBVN to supply Electricity to apartments owners vide Account # 3420660000 and K No 2123053952 and has installed Dual Power Supply Energy Meter [in petitioner's case Meter # 8565] which facilitates recording of main supply and backup supply, for supplying electricity to delivered / handed over apartments from Oct 2008 [in case of Petitioner from May 2009].
- f) The builder i.e. Respondent No. 1, collected cost of Meter and installation charges amounting to Rs 35,000 each, from the resident / owners including the petitioner at the time of offering possession.
- g) The Respondent No. 2 appointed C&W i.e. Respondent No. 3 as maintenance agency sometime in Aug 2015/16.
- h) HERC Regulations, 2013 were issued by the Commission to provide administrative convenience to Distribution Licensees and to minimise harassment to individual consumers from DISCOM employees, so that distribution licensees have one-point contact meter reading, billing and payments.

- i) A resident in a Group Housing Society / Builder, Condominium having electricity connection under said regulation is for all purposes, a consumer under DS category and tariffs and benefits available to a person in DS category are always available to a person resident / owner in Group Housing / Builder Apartment Complex also.
- j) The relief sought by the petitioner is emerging out of conduct of Respondents by not adhering to certain aspects of Single Point Supply Regulation, 2013 and other orders, instructions, circulars and procedures issued by the Commission is being sought:
- a. Tariff charged including Penal charges to Resident, not in conformity with Commissions orders.
 - b. Electricity Billing being inaccurate, showing charges not meant to be part of Electricity bill
 - c. Threatening Consumers of disconnection of Electricity, when Electricity bill/own consumption is fully paid for.
- k) The Respondents have been raising bills wrongly by raising Common Area Maintenance / electricity in their own consumer bills. In addition, they charge Rs. 500 for delay in payment of Electricity charges, which as per Commission's previous order cannot be more than Rs 100.

If this Rs 500 is not paid, it is compounded each month by another Rs 500.

The Electricity bill contains following:

- Own Main Electricity consumption of each resident / apartment
 - Backup Electricity charges of each resident / apartment
 - Common Area Electricity [CAE] charges [street lights and Club Electricity etc] allocated on size of apartment
 - Service Tax / GST charged on CAE & Backup Charges
 - Penal charges for non-payment on any of the above
- l) In addition, there is a threat "subscribed in the bill" to disconnect main Electricity, even if maintenance charges are not paid, again, contrary to Orders of this Commission, which has stated in its orders that RWAs cannot disconnect Electricity for Maintenance charges. CAE [Common Area Electricity are actually Maintenance charges which have been clubbed into Electricity bill just to hype the fear and intimidate Apartment owner.

- m) The methodology of charging Common Area Maintenance charges [whether on Equal basis to each apartment or on Value of Flat] is subjudice at Punjab & Haryana High Court in writ: [CWP 9792 of 2018] filed by some residents / including the petitioner. Further, 2 High Courts [Gujarat HC double Bench in 2013 AND Mumbai High Court in 2001] have adjudicated that it is not proper to charge Common Area Maintenance charges on size of apartment but should be charged equally].
- n) He has been paying all his bills always on time till 31st Dec 2015. Maintenance Bills from 1st Jan 2016 have been paid on Equal basis, as District Registrar Ruled through a consent order that bills on Maintenance be raised on equal basis as provided in HRRS Act 2012. Respondent No. 2 never complied with that Order. The Common Area Electricity [Not linked to Owner Consumption but street lights and Club Electricity etc] has been paid on equal basis till 30 Jun 2018. A notification was issued on 22nd Jun 2018 amending rules to ask RWAs to amend Bye laws, to make it on size. This notification is also being challenged in HC, as it is against principles of Equity. But under protest, the Petitioner is paying ALL maintenance bills and CAE on Size i.e. PSF basis from 1st Jul 2018 [as matter is subjudice with P&H HC]. It is important to state that Petitioner has always been paying his own consumption and back up Diesel charges on Consumption basis in full each month.
- o) The Respondent Nos. 2 and 3 are charging Service tax on common area electricity charges which again is not in-line with the provisions laid under single point bulk domestic connections or as per the DHBVN bill payments. Moreover, Electricity, being in the negative list of service tax, is exempted from the Service tax.
- p) The Respondent Nos. 2 and 3 disconnected electricity of the Petitioner on 27th Aug 2016, and only after Police were called that Electricity was restored. All this when Electricity own Consumption Charges were paid in total by him. The Petitioner at that time had his ailing 93/94 father staying with him, who was harassed no ends for 6 hours without electricity. This was also covered in the Local Press.
- q) The Respondent Nos. 2 and 3 disconnected electricity supply for non-payment maintenance charge or any reasons (Not linked to electricity payments) that too without any prior notice or information. As per the Single Point Supply Regulation, a GHS/developer /builder/maintenance agency/RWA acts as intermediary only between a resident and a distribution licensee for supply of electricity to a

resident's apartment/flat and if such resident is regularly paying its dues towards electricity consumption GHS/developer/builder/ maintenance agency/RWA has no right or power to discontinue or stop supply of electricity to his/her apartment/flat.

1.2. The Petitioner has prayed as follows:

“

I. The Petition, in its present form, may kindly be taken on record.

II. Condone any inadvertent omissions/errors/shortcomings and permit Petitioner to add/change/modify/alter this filing and- make further submissions as may be required at a future date.

III. Immediate direction to the Respondent No.2 & 3 not to discontinue supply of electricity to a resident's flat/apartment who honestly paying for their own consumed electricity until final judgments by the Commission.

IV. To direct the Respondent No. 1 to 4 to follow Single Point Supply Regulation and charge its residents as per provisions of the said regulation and not charge Rs 500 for penalty and not to compound it.

V. To Raise CAE separately and not as part of Electricity Bill. And pass on credit to individual resident for excess amount charged until change is implemented.

VI. To pass strictures and orders of violation of H ERC regulations for having disconnected Electricity for 6 hours on 2ih Aug 2016, giving hardship to sick and ailing 93/94 old very senior citizen.

VI. To Direct Respondent # 2 & 3 to not threaten Petitioner / Apartment owners for disconnection of Electricity if own Consumption Electricity is fully paid for. And if any threat is given, the Distributor Licensee DHBVN be directed to take firm action against Respondent # 2 & 3 and file criminal charges.

VII. Pass any such other order/s and/or direction/s which the Commission may deem fit and proper in the facts and circumstances of the case.

VIII. Please allow leave of absence to us to attend hearing and proceedings of this petition at Panchkula, being working professional and request commission to decide as per merit of case and keeping interest of public at large in mind.”

Respondent's Replies

2.1. Mr. Rajiv Malhotra along-with some other bigger apartment owners of the complex has filed a false and frivolous complaint before the District Registrar of Firms &

Societies Gurugram wherein they have prayed that the maintenance charges should be charged equally from all the apartment owners irrespective of the size of the apartment and on the said complaint the DROS has passed an order dated 23.02.2016 directing the association to charge maintenance on equal basis. The said order of the DROS was challenged as per procedure before the State Registrar of Firms & Societies, Haryana at Chandigarh and the SROS was pleased to set aside the said order of the DROS. Further, Mr. Rajiv Malhotra and others have then challenged the said order of the SROS before the Hon'ble Registrar General of Firms & Societies, Haryana at Chandigarh and the RGOS was pleased to leave it to the duly elected governing body to decide the maintenance charges and as such losing the case from there also Mr. Rajiv Malhotra has approached the Hon'ble High Court of Punjab & Haryana thereby challenging the said order of the RGOS but till today no stay of the said order has been ordered by the Hon'ble High Court and the next date is 14.08.2019. It is also pertinent to mention that during the pendency of the petition before the SROS, Haryana Mr. Rajiv Malhotra along with some other apartment owners has also filed 3 different civil suits on the base of the order of the DROS in the Civil Court, Gurugram there by praying before the Hon'ble Court in all the above mentioned 3 suits to restrain the association (VBARA) and its office bearers from disconnecting their electricity under the electricity act 2003 but after the orders of the SROS and the RGOS the Hon'ble Civil Court, Gurugram has rejected the stay applications in two suits and as such Mr. Rajiv Malhotra has chosen not to argue his stay application and has withdrawn his name from the civil suit.

- 2.2. It is submitted that not only clause 45 of the model bye-laws) under the Haryana Registration & Regulation of Societies Rules, 2012 empowers the Board of Managers to disconnect the electricity and other services but also the approved bye-laws of the society do empowers the BOM to do the same. Despite all the above mentioned sequence of events and orders Mr. Rajiv Malhotra has chosen not to pay the outstanding dues and now is adopting pressure tactics to pressurize the Association and its duly elected board of managers to achieve his ulterior motives and infact to save his skin from the due course of law as Mr. Rajiv Malhotra has broken the lock of the meter room in which meters of many apartments are installed, in an illegal and unlawful manner for which the association reserves its right to take appropriate legal action against Mr. Rajiv Malhotra.

- 2.3. It is denied that the petitioner has always been paying his own electricity consumption and backup charges on time, since inception which can be easily made out from the ledger / account details of the petitioner. It is further submitted that upon perusal of the account details it can be very easily made out that the petitions claim of making his payments on time are all false and in fact as per the guidelines of this Hon'ble forum the petitioner is yet to pay an amount of Rs. 11,500/- as surcharge towards the dues.
- 2.4. It is also denied that the tariff charged to residents is including penal charges is not in conformity with the orders of this Hon'ble Commission and electricity billing is inaccurate. The billing format only carries a precautionary warning/ advance notice that in case of nonpayment till the due date electricity will be discontinued, and such language also finds mention in the bills issued by DHBVN.
- 2.5. It is further submitted that the common area electricity is duly included in the bills raised by the Respondent no. 4 which is issued for the total number of units consumed in the GHS i.e a sum total of units consumed in the residential apartments and the units consumed in the common areas. If an association like the answering respondent will only pay the own consumptions of the apartments to the distribution licensee and do not pay for the units consumed in the common areas than the distribution licensee i.e the respondent no. 4 will disconnect the electricity supply of the answering respondent, That even otherwise also it is denied being wrong that the Common area Electricity has nothing to do with the petitioner or his wife as the petitioner also uses the common services and facilities and as such is bound to pay for his share for the same. That it is further denied being wrong that the answering respondent charge Rs. 500/- for delay in payment of Electricity Charges, which is as per Commission's previous order cannot be more than Rs. 100, Whereas it is submitted that the said amount of Rs. 500/- is being charged as Late fee (if applicable) on non-payment/ delayed payment of CAE & Power Backup Charges and not for delay in payment of electricity charges.
- 2.6. It is admitted that the electricity bill contains own main electricity .consumption of each resident/ apartment, whereas it is submitted that it does contain Fixed charges on the connected load, Backup Electricity Charges of each resident/ apartment, Common Area Electricity charges [street lights and club electricity etc] allocated on size of apartment, whereas it is denied that it has nothing to do with consumption of an apartment/ resident and it is submitted that the street lights

and club electricity is also used by the residents only and as such they cannot run away from the same, even otherwise also the answering respondent also is bound to pay the same regularly to the distribution licensee i.e the respondent no. 4 and nonpayment of the same also results In the disconnection of the electricity supply by the respondent no. 4, So if the residents will continue to take the stand as taken by the petitioner than the answering respondent will be unable to dear the bills raised by the respondent no. 4 and resultantly the electricity supply of the entire complex will be disconnected. It is admitted that GST is charged on CAE & Backup Charges

- 2.7. It is submitted that no electricity connection has been disconnected for nonpayment of maintenance charges by the answering respondent.
- 2.8. The respondent levy electricity charges as per Regulation No. 5.5 of *HERC Single Point Supply Regulation, 2013*, the electricity bill clearly shows the energy consumed and tariff applicable including all the relevant details. Further maintenance charges/ any other charges not relating to electricity consumption are not charged through the electricity bill.

Proceedings

- 3.1. The case was first heard on 26/04/2019. The representatives for Respondent No.4 i.e., DHBVN were present only. The Commission directed them to check the premises of the Petitioner and submit its report on the billing procedure followed by the developer/RWA. The Commission took a note of the fact that no-one appeared on-behalf of the Petitioner and Respondents No. 1, 2 & 3 in the matter.
- 3.2. The case was again heard on 08/05/2019. The Petitioner, Sh. Rajiv Malhotra briefed his case to the Commission mainly summarizing his written submissions that RWA is not billing per as the provisions of *Haryana Electricity Regulatory Commission (Single Point Supply to Employers' Colonies, Group Housing Societies and Residential or Commercial cum Residential Complexes of Developers) Regulations, 2013*. However, Counsel appearing on behalf of RWA pleaded that the billing in their society is strictly being done as per the Regulations. Having heard the contentions of both the parties, the Commission directed the concerned XEN of the Respondent No. 4 to verify the documents submitted by both parties and submit its detail report.

- 3.3. During the last hearing held on 18/07/2019, DHBVN submitted copy of their Memo No. 1102P/32/HERC dated 17/07/2019, in compliance to the Commission's directions in Interim Order dated 10/05/2019.
- 3.4. Smt. Pooja Aganpal Counsel for Respondent Nos. 1 and 2 admitted the fact that billing of the Petitioner was not in line with the provisions of Haryana Electricity Regulatory Commission Single Point Supply Regulations. Accordingly, they have revised the bills of the Petitioner and out of current outstanding of Rs. 23,017.45/- (including surcharge), refund of Rs. 11,517.45/- shall be adjusted in his bill of next billing cycle. She further prayed before the Commission that such revision in bills is not possible for all other consumers in one go as the data being quite voluminous and also requested to allow levy of GST on common area consumption as per various provisions issued by Ministry of Finance, Govt. of India.

Commission's Analysis and Order

- 4.1. The Commission has carefully examined the contents of Petition, reply made by the Respondents, material placed on record and the detailed deliberation, averments made by the representative of both the parties during the various hearings in the matter.
- 4.2. The Commission in its Interim Order dated 10/05/2019 had directed the concerned XEN of the licensee to verify & reconcile the documents submitted by both parties and submit the detail report, within 10 working days from the receipt of this Order. In compliance to above, DHBVN has submitted report vide Memo No. 1102P/32/HERC dated 17/07/2019 wherein it is indicated that the XEN, Sub-Urban Division, DHBVN (Gurugram) has verified the billing format to be applied by the Respondent Nos. 2 & 3 for billing their consumers and separate calculation has been prepared comprising details of the charges to be paid by the Petitioner. In the said sheet it is mentioned that out of current outstanding of Rs. 23,017.45/- (including surcharge) refund of Rs. 11,517.45/- shall be adjusted in his bill during next billing cycle.

- 4.3. The Commission observes that since the Respondents have revised the electricity bill of the Petitioner and have provided appropriate refund, therefore, the matter stands resolved. However, the Respondent Nos. 1 & 2 are directed to henceforth bill its consumers strictly as per the provisions of *The Haryana Electricity Regulatory Commission (Single Point Supply to Employers' Colonies, Group Housing Societies and Residential or Commercial cum Residential Complexes of Developers) Regulations, 2013* considering applicability of various Taxes/duties as per various notifications in force.
- 4.4. In view of the above, the case is disposed of accordingly.

This Order is signed, dated and issued by the Haryana Electricity Regulatory Commission on 23/07/2019.

Date: 23.07.2019	(Naresh Sardana)	(Pravindra Singh)	(Jagjeet Singh)
Place: Panchkula	Member	Member	Chairman