

**BEFORE THE HARYANA ELECTRICITY REGULATORY COMMISSION AT
PANCHKULA**

Case No. HERC/PRO- 47 of 2018

Date of Hearing : 27.08.2019

Date of Order : 27.08.2019

In the Matter of

Complaint under Section 142, 146 and 149 of the Electricity Act, 2003 for violating the Order dated 10.01.2017 passed by Electricity Ombudsman, Haryana.

Petitioner National Fertilizers Limited, Gohana Road, Panipat,

V/s

Respondents

The Chairman-cum-Managing Director,
Uttar Haryana Bijli Vitran Nigam Limited

Respondent-1

XEN City (Operation), Panipat UHBVN

Respondent-2

SDO 'OP' Model Town Sub-Division,
UHBVN Panipat

Respondent-3

Present on behalf of the Petitioner:

Shri Akash, Advocate

Shri R. Y. Pandey, Dy. Manager (Electrical)

Shri S.K. Agarwal, Dy. Manager (Legal)

Present on behalf of Respondent:

Smt. Sonia Madan, Advocate

Shri Parvinder, SDO, Panipat

QUORUM

Shri D.S. Dhesi, Chairman

Shri Pravindra Singh, Member

Shri Naresh Sardana, Member

ORDER

1) Brief Background of the Case

1.1 The Petitioner has submitted that:

- a) The National Fertilizers Limited is a fertilizer company which has been set up under the Public Sector, and is duly incorporated and registered under The Companies Act, 1956, owned and controlled by Government of India, has its registered office at SCOPE Complex, Core-III, 7, Institutional Area, Lodhi Road, New Delhi – 110003 and having one of its unit, inter-alia, at Gohana Road, Panipat. The present complaint/petition on behalf of the complainant Company is being instituted through its Deputy General Manager (Electrical & Instrumentation) Sh. Bishamber Kumar Gakher who is duly authorized by Delegation of Powers dated 15.04.2003 and is otherwise also conversant with the facts of the case.
- b) They are running the Fertilizers Factory at Panipat and is consumer of UHBVNL having Industrial Electrical connection bearing A/c No.LS-14 with sanctioned contract demand of 16000 KVA. The complainant falls under the category HT Industry and is regularly paying the energy bills issued by the respondent Nigam.
- c) The respondent Nigam has been charging the fixed charges on per month basis in the energy bills raised for the months prior to March, 2015 in compliance of tariff order issued vide Sales Circular No. 38/2014 of UHBVN. However, from the month of March, 2015 onwards, respondent Nigam has started to raise bill for fixed charges on day basis instead of per month basis against rules and regulations contained in their own notifications and Sales Circulars.
- d) As per Tariff order/ Sales Circular No. 38/2014 of UHBVN, applicable w.e.f. 01.04.2014 to 31.03.2015, fixed charges of Rs.150/- per K.V.A. per month of the sanctioned contract demand is leviable, in case supply is on HT. Similarly, as per Tariff order/ Sales Circular No.09/2015, applicable w.e.f. 01.04.2015 to 31.03.2016, fixed charges of Rs.170/- per K.V.A. per month of the sanctioned contract demand is leviable in case supply is on HT. The case of NFL is fully covered by above said Tariff orders vide which it is made clear that Rs.150/- and Rs.170/- per KVA, as the case may be, is to be charged on monthly basis of sanctioned contract demand of 16000 KVA. As stated above,

respondent Nigam has been charging the fixed charges on per month basis in the energy bills raised for the period prior to month of March, 2015 and only thereafter fixed charges is being charged on per day basis.

- e) The complainant against the action of the respondents in issuance of wrong bills and irrational calculations of fixed charges represented to the respondents vide its representation dated 03/05.10.2015. It was pointed out that against tariff rate of Rs.170/- per month per KVA of Contract Demand, fixed charges have been charged @ Rs.175.66 per KVA considering the months of 31 days which is incorrect and the same should be discontinued immediately after refunding the extra amount already charged in this regard during the previous months. This was followed by reminder dated 19/21.01.2016. It may be pertinent to mention here that during the months from July, 2015 to September, 2015, the respondent instead of charging FSA @ Rs. 1.64 per KWH in terms of Sales Circular No.U-32/2015 charged the same @ Rs. 1.61 and Rs. 1.66 per KWH.
- f) They again sent a reminder dated 09/10.02.2016 to the respondents highlighting that fixed charges are to be levied on monthly basis as per Sales Circular No.U-09/2015 and not on pro rata basis or on month days basis. It was further requested to refund, in the energy bill for the month of January, 2016, the amount of Rs. 622143.33 already charged extra /excess on account of Fixed Charges and FSA.
- g) The respondent Nigam had adjusted the amount of Rs.8810/- charged extra on account of FSA in energy bill for the month of January, 2016. But, the amount charged extra on account of fixed charges was not refunded/ adjusted by respondents and rather the fixed charges on day basis were again charged in bill for the month of January, 2016.
- h) The representations made by the complainant failed to evoke any response and respondents did not even bother to reply to representations made by the complainant. As such, Legal Notice dated 01.03.2016, through Sh. Ishwar Singh, Ghangas Advocate, was served upon the respondents to charge the fixed charges at the rate of Rs.170/-per month of sanctioned contract demand of 16000 KVA and sending further bill(s) at the fixed charges on per month basis in accordance with above said Sales Circular No.U-09/2015. It was

further requested to adjust the amount of Rs.7,40,000/-already charged extra on account of fixed charges in coming energy bill for month of February, 2016.

- i) That the respondents have not complied with the Legal notice as well and did not even reply the same till date. On the contrary, the respondents again wrongly charged in bill of February, 2016 the amount of Rs. 8810/- on account FSA, the adjustment of which was earlier given in the bill of January, 2016.
- j) They filed complaint before the Consumer Grievance Redressal Forum, UHBVN Haryana at Kurukshetra and however, the complaint of the complainant was dismissed vide orders dated 21.07.2016. Aggrieved against the said orders, the appeal was filed before the Ld. Electricity Ombudsman Panchkula and the after considering the submissions of the both the parties the Electricity Ombudsman Haryana, vide orders 10.01.2017 was pleased to decide the matter with the following observation:-
 - i) To levy the fixed charges to the Appellant (i.e. the present complainant) on monthly basis as per the new UHBVNL sales circulars No. U-38/2014 and U-9/2015.
 - ii) To refund/adjust the access amount alongwith the interest as per prevailing instructions issued under the relevant regulations.
 - iii) The respondents were further directed to take immediate appropriate action for implementation of its own sales circulars.
- k) The copy of order dated 10.01.2017 was also sent to the respondents for compliance of the order vide letter No. NFL/PT/Elect./UHBVN/5/2017 dated 16.01.2017. Thereafter, several reminders/letter dated 28.01.2017, 14.02.2017, 01.03.2017 and 28.03.2017 were also sent. However, the respondents have willfully failed to comply with the order dated 10.01.2017.
- l) A period of more than 10 months have elapsed since the passing of the orders by the Electricity Ombudsman. However, despite the fact it is mandatory for the respondent-Nigam to comply with the orders of the Ombudsman which is a statutory Authority as per the provisions of the Electricity Act but still, the respondents have not complied with the above said orders despite issuance of repeated notices.

m) Regulation 3.36 of the *Haryana Electricity Regulatory Commission (Guidelines for establishment of Forum for Redressal of Grievances of the Consumers, Electricity Ombudsman and Consumer Advocacy) Regulations, 2016* notified on 29.07.2016, provides as follows:-

3.36 Non-compliance of the Ombudsman's orders shall be deemed to be a violation of these Regulations and liable for appropriate action by the Commission under the Provisions of the Electricity Act, 2003.

n) In as much as, the orders passed by the Electricity Ombudsman have not been complied with by the respondents, the complainant is constrained to approach this Hon'ble Commission by way of present complaint/petition.

1.2 In view of the above, the Petitioner has prayed as follows:

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- i) *Initiate an inquiry against the respondents, for non compliance of orders dated 10.01.2017 (C-15) of the Electricity Act, 2003 and thereafter, pass appropriate orders directing the respondents to give the requisite refund to the complainant in terms of the orders (C-15) of the Electricity Ombudsman*
- ii) *Take action against the respondents as per the provisions of Sections 142,146 and 149 of Electricity Act, 2003 for willful disobedience of the orders of the Electricity Ombudsman and;*
- iii) *Award interest, compensation and exemplary costs in favour of the complainant and against the respondents;*
- iv) *Any other order or further order which this Hon'ble Commission may deemed fit proper in the facts and circumstances of the case in favour of the complainant in the interest of justice.”*

2) Respondent's Replies

2.1 During the hearing held on 27/08/2019, Smt. Sonia Madan, Advocate appeared on behalf of Respondent and submitted their replies in which it is mentioned that the Order passed by the Electricity Ombudsman dated 10/01/2017 has been complied by them.

2.2 The Respondent have submitted in the said reply that the amount of Rs. 6,22,143/- has been adjusted vide sundry no. 62/207A dated 31/07/2019 and accordingly have prayed before the Commission to dispose of the matter as the directions of Electricity Ombudsman has been complied by them.

3) Commission's Analysis and Order

3.1 The hearing in the matter was held on 26/07/2019 and 13/08/2019. On both the occasions, the Advocates appearing on behalf of Petitioner and Respondent

requested for adjournment of the matter due to strike of the Advocates on the said dates.

- 3.2 The matter was again listed on 27/08/2019. Smt. Sonia Madan, Advocate appearing on behalf of Respondent submitted that in compliance of the Electricity Ombudsman Order dated 10/01/2017 an amount of Rs. 6,22,143/- has been credited in the Petitioner's account.
- 3.3 The Ld. Counsel, Shri Akash, appearing on behalf of the Petitioner submitted that the Electricity Ombudsman had directed the Respondent to refund/adjust the excess amount along with the interest but the interest has not been paid.
- 3.4 Smt. Sonia Madan, advocate for the Respondents, submitted that the Electricity Ombudsman in its Order did not specify the rate of interest at which the excess amount is to be paid along with interest. Therefore, the interest was not paid to the Petitioner.
- 3.5 Having heard both the parties, the Commission observes that the Electricity Ombudsman directed the Respondent to refund/adjust the excess amount along with the interest but the Respondents have not paid interest amount to the Petitioner.
- 3.6 The Commission feels appropriate and directs the Respondent to pay an interest @ 9% per annum to the Petitioner from the date of charging of the excess amount till the date of payment. The order be complied within 15 (fifteen) days from the receipt of this Order.
- 3.7 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 27/08/2019.

Date: 27.08.2019	(Naresh Sardana)	(Pravindra Singh)	(D.S. Dhesi)
Place: Panchkula	Member	Member	Chairman