

BEFORE THE HARYANA ELECTRICITY REGULATORY COMMISSION

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

Case No. HERC/PRO – 44 of 2019

DATE OF HEARING : 31.10.2019

DATE OF ORDER : 31.10.2019

IN THE MATTER OF:

Complaint under Section 142, 146 and 149 of Electricity Act, 2003 for violating the order dated 26/06/2018 passed by the Consumer Grievance Redressal Forum, Hisar, Haryana in case no.2147/2018 and Order dated 11.09.2018 passed by Electricity Ombudsman in Appeal No. 18/2018 as no revised bill was received and the respondents keeps on raising the bills illegally without complying with the orders and also for violating the various regulation of HERC (Guidelines for establishment of forum for redressal of grievances of the consumers, electricity ombudsman and consumer advocacy) Regulations, 2017 notified on 29.07.2017

Petitioner

The Indian Airlines Pilots Co-Operative House
Building Society)

V/s.

Respondent

Dakshin Haryana Bijli Vitran Nigam, Hissar through
its Managing Director

S.E., Dakshin Haryana Bijli Vitran Nigam
Sector-31, Gurugram

PRESENT

On behalf of the Petitioner:

Shri B.P. Agarwal, Advocate

On behalf of the Respondent:

Shri Gaurav Dahiya, SDO (DLF) DHBVN

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) They are an association of apartment owners of The Indian Airlines Pilots Co-operative House Building Society and obtained an electricity connection from the respondent through Account No. 4015250000, Division: Sub Urban Gurgaon, Sub Division: G21-DLF, with the sanctioned load of 2982 kW in the name of Indian Air and have paid the Security deposit as demanded by the respondents.
- b) The society is having 245 apartments and they are using the electricity from the connection provided by respondent.
- c) On 09.01.2013 a notification was issued by the HERC for Single Point Supply to Residential Colonies or Office cum Residential Complexes of Employers, Group Housing Societies and Commercial cum Residential Complexes of Developers, Regulations and as per aforesaid notification an energy difference up to 4%, in case of supply on 11 kV, 5% in case of supply on 33 kV shall be permissible towards transformation and/or LT losses. The units has to be billed after deducting the 4% or 5 % from the total units consumed during a particular month depending upon the supply obtained by the society but Respondent has failed to comply with the aforesaid notification which was applicable w.e.f.09/01/2013 and did not deduct 4% units for the relevant period when the supply was on 11 kV from the total units consumed and thus cause huge loss to Complainant. However, the respondent has given rebate of 4% on SOP only which was also allowed from Aug./Sept. 2013 and not from the January 2013.
- d) Similarly complainant has deposited huge amount as a Security deposit and as per Section 154(4) of Electricity Act, 2003, the respondents are liable to pay the interest from 2003 or from the date of deposit at bank rate which was 6% prior to 2012 and for the period 2012-13 it was 9.5%, for the period 2013-14 it was 8.5%, for the period 2014-15 it was 9%, for the period 2015-16 it was 8.5 %, for the period 2016-17 it was 7.75 % and as per Sales Instruction 9/2016 in case the interest accrued during the year is not adjusted in the consumer's bill for the first billing cycle of the ensuing financial year, the licensee shall be liable to pay interest at the rate of 18% for the period for which the payment of interest accrued is delayed but the respondents have failed to comply with the provision of law.
- e) Before filing the present complaint, the complainant has issued a legal notice on 13 .03.2018 through the counsel to refund the excess amount paid by the Complainant along with the interest but the respondent has failed to respond to the legal notice. Accordingly, the Complainant was forced to file a

complaint before the Consumer Grievances Redressal Forum, Hisar vide complaint No. 2147/2018.

- f) The case was fixed for hearing on 29.05.2018 and the respondent filed the reply to the complaint in which it was stated that the complainant has paid Rs.29,82,000/- as ACD and they have paid the interest from 11-12 onwards except for the period 2013-14 and 2014-2015 and for this period the interest of Rs.4,02,570/- will be adjusted in the bill issued for the month of June 2018, from which it was clear that for the year 2013-14 and 2014-2015 no interest was paid prior to June 2018 and there was delay of making the payment of interest.
- g) As per the Sales circular No. D-29/2016 issued by the Respondent Company and as per the clause 5.8.1 & 5.8.2 of Regulation No. 34/2016 issued under the *HERC (Duty to supply electricity on request, Power to recover expenditure incurred in providing supply and Power to require security) Regulations, 2016*, the respondents are required to pay the interest in the month of April of each year and if they fail to do so then liable to pay the penal interest @ 18% per year and hence the respondents are liable to pay the penal interest for the period 2013-14 and 2014-2015 on Rs.29,82,000/-. The relevant Regulations are as follows:
- "5.8.1: The licensee shall pay interest to the consumer at the Bank rate as determined by the Reserve Bank of India on 1st April of each year or more as specified by the Commission payable annually on the Consumer's security deposit. The interest accrued during the year shall be adjusted in the consumer's bill for the first billing cycle of the ensuing financial year.*
- 5.8.2: In case the interest accrued during the year is not adjusted in the consumer's bill for the first billing cycle of the ensuing financial year, the licensee shall be liable to pay interest at the rate of 18% for the period for which the payment of interest accrued is delayed."*
- h) Regarding the number of dwelling units it was alleged that the details of the dwelling units was not available with DHBVN, whereas full details of the dwelling units was provided to the respondents at the time of getting the connection sanctioned the details of the dwelling units was supplied to the respondent and on the basis of which the connection was sanctioned.
- i) Further, in the reply it was mentioned that DHBVN is already giving the 4% rebate on SOP to the Complainant but it was not clarified from which date they have started giving the rebate. As per guidelines issued by HERC the respondent is required to give rebate of units w.e.f. 09.01.2013 but the same was not provided by the respondent.
- j) Without considering the submission of the complainant the Hon'ble CGRF dated 26.06.2018 held that the consumer and official of DHBVN shall sit

together and reconcile the difference if any in the interest of ACD without directed the respondent to file the details of the interest paid and for balance interest pay the interest in terms of the Sales circular No. D-29/2016 issued by the Respondent Company and as per the clause 5.8.1 & 5.8.2 of Regulation No. 34/2016 issued by the HERC under the Haryana Electricity Regulatory Commission (Duty to supply electricity on request, Power to recover expenditure incurred in providing supply and Power to require security) Regulations, 2016. The Hon'ble CGRF also failed to considered that the list of occupancy was already provided to the respondent at the time of getting the connection and now again after passing the order the list was provided to the SDO through e-mail.

k) Accordingly, the complainant filed the Appeal vide its No. 18/2018 before the Hon'ble Ombudsman and the matter was listed for hearing on 10.09.2018 before the Hon'ble Ombudsman. During the hearing there was settlement between the parties as follows:-

- (i) *“After the detailed deliberations, it was mutually agreed that the Appellant would submit a certificate issued by the Director, Town & Country Planning regarding occupancy of 245 dwelling units along with the electricity bills issued by the RWA to the individuals 245 units, as a documentary evidence. After considering the documentary evidence, the account will be overhauled by giving the benefit of slab system, as per the instructions of the Nigam regarding the prevailing Single Point Supply Regulations. Further, the Interest on the ACD, already given, would be reviewed in light of the Departmental instructions and the benefit, as claimed by the Appellant, would be allowed accordingly. The Respondent SDO made a written statement in this regard.*
- (ii) *In response, the Ld. Counsel for the Appellant stated in writing that “As mutually agreed and in view of the statement of the Respondent SDO, I have instructions to withdraw the present appeal”.*
- (iii) *Keeping in view the above, material available on record and the submissions made by both the parties, the appeal is disposed of as “settlement by conciliation” in terms of HERC Regulations 37/2016 dated 29.07.2016.”*

l) Since in the certificate issued by the Director, Town & Country Planning to the complainant number of flats were not mentioned and hence the complainant through his counsel made the representation under RTI to Director, Town & Country Planning to issue the certificate showing the number of flats and thereafter the reply under RTI was received confirming the issue of certificate on 18.05.2004 and in the reply the number of dwelling units was shown as 245 as claimed by the complainant. That immediately after receiving the certificate the complainant made the representation vide letter dated 16.05.2019 to the concerned SDO and send the copies of the documents received under RTI from Director, Town & Country Planning but till date neither the reply was received nor revised bill was received. The complainant has also supplied the house tax notices received by all the 245

members during the period 2013-14 and thereafter was supplied to the SDO earlier also but no reply was received.

- m) The respondent even after supply of the copy of the certificate to the SDO the complainant has received the bill for the month of May 2019 in which also the rebate for 245 dwelling unit was not allowed by the respondent.
- n) The cause of action arose in favour of the complainant and against the respondent when the respondents violated order dated 26.06.2018 passed by CGRF, order dated passed by Hon'ble Ombudsman dated 11.09.2018, various tariff order starting from 2013 onwards passed by this Hon'ble Commission for allowing the rebate, Order dated 09.01.2013 allowing 4% rebate on units, Section 154(4) of Electricity Act, Sales Circular D-29/2016, cause of action again arose when the certificate issued under RTI was served upon the respondent showing the number of dwelling units, cause of action is still subsisting.

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

“

- a) *Initiate an inquiry against the respondents , every person who at the time the offence was committed was in charge of and was responsible to the company for the conduct of the business of the company for violating Electricity Act, 2003, tariff provision for the year 2013-14 onwards as no slab benefit was given, there was no deduction 4% units from the total units consumed, interest on ACD was given as required under the law, Clause 2.52, 2.56 & 2.57 of Haryana Electricity Regulatory Commission (Guidelines for establishment of Forum for Redressal of Grievances of the Consumers, Electricity Ombudsman and Consumer Advocacy) Regulations, 2017 Regulation passed by this Hon'ble Commission, Various Sales Circulars and order dated 26.06.2018 passed by CGRF and order dated 11.09.2018 passed by the Hon'ble Ombudsman and take the action against them under section 142, 146 and 149 of Electricity Act, 2003 and;*
- b) *Direct the respondents to issue the revised bill in terms of the order dated 26.06.2018 passed by CGRF and order dated 11.09.2018 passed by the Hon'ble Ombudsman till the current reading along with the full details of the revised demand and same be either refunded or adjust against the current demand and refund be made in terms of the Regulation 2017 and;*
- c) *Direct the respondents to pay the interest in terms of the Regulation dated 29.07.2017 passed by this Hon'ble Commission on refund amount and interest @ 18 on delayed payment of interest on Security deposit / ACD;*
- d) *Award the compensation and costs of present proceedings in favour of Complainant and against the Respondent and;*

- e) *Any other or further order which this Hon'ble Commission may deem fit and proper in the facts and circumstances of the case in favour of the Complainant in the interest of justice. ”*

2) Proceedings

- 2.1) The case was heard on 31/10/2019, as scheduled. The representatives of both the parties were present during the hearing.
- 2.2) The Ld. Counsel, Sh. B.P. Agarwal appeared on behalf of the Petitioner and briefed the Petition before the Commission related to DHBVN's non-compliance of Order dated 26/06/2018 passed by the Consumer Grievance Redressal Forum, Hisar, Haryana in Case No. 2147/2018 and Order dated 11/09/2018 passed by Electricity Ombudsman in Appeal No. 18/2018.
- 2.3) Shri Gaurav Dahiya, SDO (DLF) DHBVN appeared on behalf of the Respondent and submitted that Electricity Ombudsman in its Order dated 11/09/2018 decided that the Petitioner would submit a certificate issued by the Director, Town & Country Planning regarding occupancy of 245 dwelling units along with the electricity bills issued by the RWA to the individual 245 units, as a documentary evidence. However, till date the Petitioner has not submitted the electricity bills issued by the RWA to the individual 245 units.

3) Commission's Analysis and Order

- 3.1) The Commission observed the documents placed on record and heard the arguments of both parties.
- 3.2) During the hearing, Sh. B.P. Aggarwal Ld. Counsel appearing on behalf of the Petitioner drew attention towards Order dated 11/09/2018 passed by the Ombudsman, wherein the appeal had been disposed of as *“settlement by conciliation”*. The relevant extract of the said Order is as follows:

“Both the parties deliberated the matter and showed their inclination to settle the matter mutually.

After the detailed deliberations, it was mutually agreed that the Appellant would submit a certificate issued by the Director, Town & Country Planning regarding occupancy of 245 dwelling units along with the electricity bills issued by the RWA to the individuals 245 units, as a documentary evidence. After considering the documentary evidence, the account will be overhauled by giving the benefit

of slab system, as per the instructions of the Nigam regarding the prevailing Single Point Supply Regulations. Further, the Interest on the ACD, already given, would be reviewed in light of the Departmental instructions and the benefit, as claimed by the Appellant, would be allowed accordingly. The Respondent SDO made a written statement in this regard.

In response, the Ld. Counsel for the Appellant stated in writing that “As mutually agreed and in view of the statement of the Respondent SDO, I have instructions to withdraw the present appeal”.

Keeping in view the above, material available on record and the submissions made by both the parties, the appeal is disposed of as “settlement by conciliation” in terms of HERC Regulations 37/2016 dated 29.07.2016.”

- 3.3) It is noted that Shri Gaurav Dahiya, SDO (DHBVN) appearing on behalf of the Respondent states that the Petitioner has still not fulfilled the directions given by the Ombudsman in Order dated 11/09/2018. Even though the certificate of the Director, Town and Country Planning regarding occupancy of 245 dwelling units has been made available but the Electricity bills issued by the RWA are yet to be made available.
- 3.4) In response to above, the Ld. Counsel on behalf of the Petitioner stated that the said electricity bills will be made available to DHBVN at the earliest.
- 3.5) As far as issue of interest on Advance Consumption Deposit (ACD) is concerned, DHBVN is directed to pass a Speaking Order.

The Petition stands disposed of in the above terms.

This Order is signed, dated and issued by the Haryana Electricity Regulatory Commission on 31/10/2019.

Date: 31.10.2019

(Naresh Sardana)

(Pravindra Singh)

(D.S. Dhesi)

Place: Panchkula

Member

Member

Chairman