

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

Case No. HERC/P. No. 41 of 2024

Date of Hearing : 03.12.2024

Date of Order : 12.12.2024

IN THE MATTER OF:

Complaint under Section 142,146 read with Section 94 of the Electricity Act,2003 & Regulation 2.32 of HERC (Forum & Ombudsman) Regulations, 2020 for imposing penalty u/s 142 and institution of complaint u/s 146 of the electricity act, 2003 on account of noncompliance of order/ direction issued by the (EO) HERC, Panchkula as well as continuing failure to comply with the direction dated 06.12.2023 by respondent(s) and for direction(s) to ensure the strict compliance of the order passed by the Electricity Ombudsman (EO) HERC, Panchkula vide order dated 06.12.2023 appeal number 92/2023.

Petitioner

Bhola Ram Bansal Cotton Oil & Gen Mills, Kalanwali, Sirsa

VERSUS

Respondent(s)

SDO, DHBVN, Operations Sub Division Kalanwali, District- Dabwali.

Present

On behalf of the Petitioner

1. Sh. Akshay Gupta, Advocate
2. Sh. Sanjeev Chopra, Representative

On behalf of the Respondent

1. Sh. Raheel Kohli, Advocate
2. Sh. Tarsem Rana, Associate to Advocate.
3. Sh. Vikram Jeet, SDO, Kalanwali
4. Sh. Ravi, SDO, DHBVN
5. Sh. Ankit Kamboj, SDO, DHBVN

QUORUM

Shri Nand Lal Sharma, Chairman

Shri Mukesh Garg, Member

ORDER

1. **Petition:**

1.1 That Complaint petitioner Sh. Bhola Ram S/o Suraj Bhan, M/s Bansal Cotton Oil & Gen Mills, Kalanwali, aged about 60 years, Resident of Kalanwali, Distt- Sirsa (Haryana) having an electricity connection bearing account number 7495022000 (Old Account Number – T32 K1HT0004) had filed an appeal before the Electricity Ombudsman HERC Panchkula.

1.2 That Electricity Ombudsman HERC passed an order. The ombudsman Order held as under:

“In view of the foregoing discussions and facts, the respondent SDO is directed to ensure adjustment/refund of MC Tax, ACD interest along with the interest at the rate of 18% per year for the period for which the payment of interest accrued is delayed (as specified in DHBVN Sales Instruction no. -9/2016) and TOU/TOD rebate for FY 2017-18 and FY 2018-19 as per Nigam instructions along with interest @ 9% per annum (as specified DHBVN Sales Circular No. D-32/2019) in the next to next billing cycle.”

1.3 That As per the submission given by respondent before EO and as per the direction given in order dated 06.12.2023- Respondent Should adjust the below in the bill issued in Feb-24

- A. MC Tax wrongly charged.
- B. Interest on ACD with penal interest @ 18% for the period interest accrued delayed since DOC.
- C. TOU TOD rebate for the period 2017-2018 and 2018-2019 with 9% p/a interest.

1.4 That Respondent has refunded the MC tax amounting to Rs. 544767 only in the bill issued in Feb-2024. Interest on ACD and TOU TOD rebate along with interest was not adjusted.

1.5 That the direction dated 06.12.2023 has not been complied by the respondent SDO and no due refund as per the reply submitted in Hon'ble Ombudsman has been made so far.

1.6 That As per the HERC Regulation 2.32 of Regulation Number 48/2020/2nd Amendment/2023 “The decisions of the Forum will be recorded and duly supported by reasons. The Order of the Forum will be communicated to the complainant and the licensee in writing within 7 days of the passing of the Order. The licensee shall comply with the order of the Forum within 21 days from the date of receipt of the order. As per the order dated 06.12.2023 and regulations of Hon'ble HERC, refund was to be reflected in the next-to-next bill cycle i.e Feb-2024, from perusal of bill of Feb-2024 it is evident that SDO has deliberately failed to comply with the direction dated 06.12.2023

and is liable to be punished in terms of Section 142 & Section 146 of the Electricity Act-2003. The respondent SDO has refunded the MC Tax unduly charged but TOU/TOD rebate for the year 2017-2019 along with 9% interest and interest on ACD along with penal interest has not been credited so far.

- 1.7 Electricity Act, 2003- Section 142 “Punishment for Non-Compliance of directions by Appropriate Commission): in case any complaint is filed before the Appropriate Commission by any person or if that Commission is satisfied that any person has contravened any of the provisions of this Act or the rules or regulations made, thereunder; or any direction issued by the Commission, the Appropriate Commission may after giving such person an opportunity of being heard in the matter, by order in writing, direct that, without prejudice to any other penalty to which he may be liable under this Act, such person shall pay, by way of penalty, which shall not exceed One Lakh Rupees for each contravention and in case of a continuing failure with an additional penalty which may extend to Six Thousand rupees for every day during which the failure continues after contravention of the first direction.
- 1.8 Section 146: “Punishment for Non-Compliance of orders or directions- Whoever, fails to comply with any order or direction given under this Act, within such time as may be specified in the said order or direction or contravenes or attempts or abets the contravention of any of the provisions of this Act or any rules or regulations made thereunder, shall be punishable with imprisonment for a term which may extend to three months or with fine which may extend to one lakh rupees, with both in respect of each offence and in the case of continuing failure, with an additional fine which may extend to five thousand rupees for every day during which the failure continues after conviction of the first such offence:
- 1.9 (Provided that nothing contained in this section shall apply to the orders, instructions or directions issued under section 121.)
- 1.10 Section 149 (1) Where an offence under this Act has been committed by a company, 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, as well as the company shall be deemed to be guilty of having committed the offence and shall be liable to be proceeded against and punished accordingly:
- (2) Provided that nothing contained in this sub-section shall render any such person liable to any punishment if he proves that the offence was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such offence.

(3) Notwithstanding anything contained in sub-section (1), where an offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of or is attributable to any neglect on the part of any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of having committed such offence and shall be liable to be proceeded against and punished accordingly.

1.11 Regulation 2.32 of HERC (Forum and Ombudsman) Regulations, 2020 (Regulation 2.32):

“The decisions of the Forum will be recorded and duly supported by reasons. The Order of the Forum will be communicated to the complainant and the licensee in writing within 7 days of the passing of the Order. The licensee shall comply with the order of the Forum within 21 days from the date of receipt of the order. In appropriate cases, considering the nature of the case, the Forum, upon the request of the licensee, may extend the period for compliance of its order up to a maximum of three months. The aggrieved consumer may approach the Ombudsman who will provide the consumer as well as the licensee an opportunity of being heard and decide the appeal.

In case of non-compliance of the order of the appropriate Forum, the aggrieved consumer may approach the Commission who will provide the consumer as well as the Licensee an opportunity of being heard. The Commission may initiate proceedings under section 142 of the Act for violation of the Regulations framed by the Commission.”

1.12 Demand Draft of Rs. 50,000 (Rupees Fifty Thousand) as fee bearing number 002449 drawn on _HDFC Bank is attached herewith as per the HERC Fee Regulations.

Prayer:

It is, therefore, most humbly prayed that considering the submissions brought out above, this Hon’ble Commission may kindly be pleased to:

- i. Direct the respondent to comply with direction passed Electricity Ombudsman Vide order dated 06.12.2023 Appeal No 92/2023 in toto.
- ii. To impose penalty of Rs. 1 Lakh on respondent(s) under Section 142 of Electricity Act 2003 for failure to comply with the order / direction passed by Ombudsman on 6.12.23 as well as continuing failure to comply with the directions and pay the dues to the complainant.
- iii. Direct respondent to pay compensation Rs.100/Per day for non-compliance of order passed by Ld. Ombudsman.
- iv. To direct institution of complaint under Section 142 of Electricity Act,2003 for failure to comply with the order / direction passed by the

Ld. Ombudsman on dated 06.12.2023 as well as continuing failure to comply with the directions against the respondent SDO.

- v. To award the penalty imposed on respondent in favor of the complainant- petitioner.
 - vi. Direct respondent to pay Rs. 1,00,000/- (Rs. One Lac only) as court fee and litigation expenses.
 - vii. To allow any other relief as deemed fit by the hon'ble Commission.
2. The case was heard on 06/11/2024. Sh. Tarsem Rana appearing on behalf the respondent sought 2 weeks' time for filing the reply. Sh.Akshay Gupta counsel for the petitioner submitted that despite ample opportunity with the respondent, they are still seeking time to file reply. To the query of the Commission on the details of the action taken by DHBVN till date for compliance of the orders dated 06.12.2023 passed by the Electricity Ombudsman, the SDO present in the court could not explain anything to the satisfaction of the Court. The Commission took serious note of the casual approach of the respondent and directed him to come well prepared in the court. The Commission adjourned the matter and directed the respondent to submit their reply upto 20/11/2024, with an advance copy to the petitioner. The petitioner to file its rejoinder upto 27/11/2024. The present SDO and the then concerned SDO shall remain present in the court along with chronology of the efforts made for compliance of the orders, on the next date of hearing. The respondent SDO will ensure the presence of the then SDO on next date of hearing.

3. DHBVN Reply DT. 18/11/2024

- 3.1 The present reply is being filed by SDO 'OP' Sub Division Kalanwali, Dabwali ("Answering Respondent") in response to the above captioned petition filed by M/S Bansal Cotton Oils & Gen Mil ("Petitioner") alleging violation of Regulation 2.32 of HERC (Forum & Ombudsman) Regulation number 48/2020/2nd Amendment/2023, in relation to the order dated 06.12.2023 passed by the Ld. Ombudsman. All allegations made by the Petitioner are denied in totality and the same may be treated as a denial as if it was made in seriatim. Nothing submitted herein shall be deemed to be admitted unless the same has been admitted thereto specifically.
- 3.2 At the outset, the Answering Respondent respectfully submits that the present petition is not maintainable in the present form, as there is no violation of the Regulation 2.32 of HERC (Forum & Ombudsman) Regulation number 48/2020/2nd Amendment/2023. Therefore, on this ground alone the present petition deserves to be dismissed by this Hon'ble Commission.

3.3 With out prejudice to the submission made in paragraph 2 of the Reply, it is submitted that status of compliance of the order dated 06.12.2023 passed by the Ld. Ombudsman is tabulated below:

| Direction | Status of Compliance | Amount refunded |
|---|---|-----------------|
| Refund of MC tax | Direction Complied. Copy of sundry and invoice dated 13/02/2024 attached | Rs. 5,44,767 |
| Interest on ACD and TOD rebate for FY 2018-2019 | Direction Complied. Copy of sundry and invoice dated 12/03/2024 attached | Rs. 1,51,644 |
| ACD penal Interest @18% and TOD rebate (FY2018-2019) interest @9% | Direction Complied. Copy of sundry and invoice dated 16/09/2024 attached Note: TOD benefit for FY 2018-19 was correctly applied and amount of Rs. 79,108 (as per sales circular D-32/2018) has been adjusted in the petitioner's account. Copy of the Sales Circular D-32/2018 attached. | Rs. 89,615 |
| TOD rebate for FY 2017-2018 | Adjustment was not effectuated because no representation from petitioner qua TOD rebate for 2017-2018 is available, as per office records. | |

In light of the above submissions, this Hon'ble Commission may be pleased to dismiss the present petition.

4. Rejoinder by the Petitioner dated 22/11/2024 to the reply submitted by the respondent.

- 4.1 That the present rejoinder is being filed on behalf of the petitioner Sh. Bholu Ram S/o Suraj Bhan, M/s Bansal Cotton Oil & Gen Mills, Kalanwali, aged about 60 years, Resident of Kalanwali, Distt- Sirsa (Haryana) having an electricity connection bearing account number 7495022000 (Old Account Number – T32 K1HT0004).
- 4.2 That the submission of this rejoinder has become necessary in light of the reply submitted by the respondent SDO Operation subdivision Kalanwali dated 18.11.2024.
- 4.3 That the present petition had been filed before the hon'ble Commission requesting compliance of the order of Ld. Ombudsman dated 06.12.2023 by the respondent SDO.

4.4 That instead of complying with the Ld. Ombudsman Order dated 06.12.2023, the respondent SDO has again tried to misguide the hon'ble Commission and to misplace the facts which he had himself admitted through written submission before the Ld. Ombudsman.

4.5 That the Ld. Electricity Ombudsman in his order dated 06.12.2023 had held as under:

“In view of the foregoing discussions and facts, the respondent SDO is directed to ensure adjustment/refund of MC Tax, ACD interest along with the interest at the rate of 18% per year for the period for which the payment of interest accrued is delayed (as specified in DHBVN Sales Instruction no. -9/2016) and TOU/TOD rebate for FY 2017-18 and FY 2018-19 as per Nigam instructions along with interest @ 9% per annum (as specified DHBVN Sales Circular No. D-32/2019) in the next to next billing cycle.”

4.6 That order of Ld. Ombudsman mentioned the following four issues very specifically:

- i) Adjustment/refund of MC Tax
- ii) ACD interest along with the interest at the rate of 18% per year for the period for which the payment of interest accrued is delayed (as specified in DHBVN Sales Instruction no. -9/2016)
- iii) TOU/TOD rebate for FY 2017-18 as per Nigam instructions along with interest @ 9% per annum (as specified DHBVN Sales Circular No. D-32/2019)
- iv) TOU/TOD rebate for FY 2018-19 as per Nigam instructions along with interest @ 9% per annum (as specified DHBVN Sales Circular No. D-32/2019)

All these benefits were to be given in the next-to-next billing cycle as per the assurance given by the respondent before the Ld. Ombudsman i.e. in the bill for February 2024.

4.7 That out of the four nos. issues addressed by the Ld. Ombudsman, only one compliance has been made by the respondent SDO and the issue of MC Tax has been settled in the bill for February 2024.

4.8 That the respondent SDO has not complied with the remaining three nos. issues as per order but has come before the hon'ble Commission claiming that all the four issues have been resolved.

4.9 That the Ld. Ombudsman Order was very specific that the interest on ACD for the delayed period was to be given along with 18% rate of interest but the interest on ACD has not been given with 18% interest

4.10 That the TOU/TOD rebates for both the financial years i.e. FY 2017-18 and FY 2018-19 were to be given with an interest @ 9% per annum but rebate for only FY 2018-19 has been given and that too not with 9% interest

- 4.11 That the TOU/TOD rebate for FY 2017-18 has been denied by the respondent SDO despite the clear order passed by the Ld. Ombudsman in this regard.
- 4.12 That the respondent SDO in his reply dated 18.11.2024 has said that *“Adjustment was not effectuated because no representation from the petitioner qua TOD rebate for FY 2017-18 is available, as per the office records”* .
- 4.13 That the respondent SDO had cited the same reason before the Ld. Ombudsman also for denying the TOU/TOD rebates for both the financial years FY 2017-18 and FY 2018-19 but when confronted by the petitioner and submissions regarding the representations, the respondents agreed that the representations had been traced out and that the rebates for both the years would be given. This has also been specifically mentioned in the Ombudsman order as under:

“J. Hearing was held on 05.12.2023, as scheduled. Both the parties were present during the hearing through video conferencing. At the outset, counsel for the respondent submitted that in compliance of the order of CGRF regarding M Tax refund and interest on ACD, for M Tax sundry No. is 199/84/175 was prepared and case ID No. 4114954479 was generated but CBO remarked to take the approval from XEN, for which needful is being done and for adjustment of Interest on ACD, sundry No. 209/91/175 has been prepared and will be uploaded shortly. Mr. Bansal further, submitted that the copies of request/application for grant of TOU/TOD tariff benefit submitted by the appellant after interim order dated 15.11.2023, have been received by the office/officials of the respondent department and the respondent department will give the benefit through sundry as per Nigam instructions. Shri Sanjeev Chopra, authorized representative of the appellant submitted that the refund be provided with interest in the next billing cycle. The respondent SDO agreed to adjust/ refund above discussed benefits in consumer account in next to next billing cycle.

- 4.14 That the representations of claimant for both the financial years were available in subdivision record is evident from the reply of the respondent SDO which he had submitted before the Ld. CGRF vide his office memo no. 64 dated 10.01.2023. In this reply, the SDO had submitted calculations of rebate for both the financial years 2017-18 and 2018-19.
- 4.15 That by raising the same issue now before the hon’ble Commission of not having received the complainant’s representation for FY 2017-18, the respondent SDO has contradicted his own reply of January 2023 and the submissions made before the Ld. Ombudsman.

4.16 That it is almost a year when the order had been passed by the Ld. Ombudsman in December 2023 but the respondent SDO has not bothered to comply with the order dated 06.12.2023 and has forced the petitioner to come before the hon'ble Commission for justice.

Prayer:

It is, therefore, most humbly prayed that considering the submissions brought out above, this Hon'ble Commission may kindly be pleased to:

- i. Direct the respondent to comply with direction passed Electricity Ombudsman Videorder dated 06.12.2023 Appeal No 92/2023 in toto.
- ii. To impose penalty of Rs. 1 Lakh on respondent(s) under Section 142 of Electricity Act 2003 for failure to comply with the order / direction passed by Ombudsman on 6.12.23 as well as continuing failure to comply with the directions and pay the dues to the complainant.
- iii. Direct respondent to pay compensation Rs.100/Per day for non-compliance of order passed by Ld. Ombudsman.
- iv. To direct institution of complaint under Section 142 of Electricity Act,2003 for failure to comply with the order / direction passed by the Ld. Ombudsman on dated 06.12.2023 as well as continuing failure to comply with the directions against the respondent SDO.
- v. To award the penalty imposed on respondent in favor of the complainant- petitioner.
- vi. Direct respondent to pay Rs. 1,00,000/- (Rs. One Lac only) as court fee and litigation expenses.
- vii. To allow any other relief as deemed fit by the hon'ble Commission.

5. Proceedings and Commission's analysis:

- 5.1 The case was heard on 03/12/2024, as scheduled, in the court room of the Commission.
- 5.2 At the outset, Sh. Raheel Kohli counsel for the respondent submitted that all the three SDOs (who remained posted in the sub-division during the execution period) are present in the court as per directions of the Hon'ble Commission. The counsel submitted that all the directions of the Electricity Ombudsman have been complied except TOD rebate for FY 2017-2018, for which the petitioner has not submitted any application.
- 5.3 Sh. Akshay Gupta counsel for the petitioner argued that orders of the Ombudsman are clear which indicate that TOD rebate for FY 2017-2018 is also required to be given as the matter was decided by EO after the respondents confirmed that the application of the complainant for TOD rebate for 2017-2018 has been found in their records.

- 5.4 To the query of the Commission on the ToD rebate for 2017-18, the counsel for the respondent and SDOs present submitted that no application for such refund is available in the record of DHBVN.
- 5.5 After hearing both the parties and going through the record placed on the file, the Commission observes as under:
- 5.6 Refund of MC Tax:
- The Respondent in its reply submitted that in compliance to the orders for refund of MC tax an amount of Rs. 5,44,767 has been refunded in the bill for February 2024.
- The Petitioner in its rejoinder acknowledged the same. As such nothing remains to adjudicate.
- 5.7 Interest on ACD (Advance Consumption Deposit) with Penal Interest:
- The Respondent in its reply dated 18.11.2024 have confirmed with supporting documents that penal interest from 2018-2019 upto 02/2024 has been paid by them in the months of March 2024 and September 2024.
- 5.8 TOU/TOD Rebate for FY 2018-2019 with Interest:
- The Respondent has confirmed in its reply that TOU/TOD rebate along with interest in line with Sales Circular D-32/2018 has been refunded to the petitioner.
- 5.9 TOU/TOD Rebate for FY 2017-2018 with Interest:
- The Respondent in its reply submitted that adjustment of TOU/TOD Rebate for FY 2017-2018 with Interest has not been done as no representation of the claimant for this period was available in their office records.
- The Petitioner in its rejoinder disputed the claim, referencing prior acknowledgments by the respondent regarding representations for both FY 2017-2018 and FY 2018-2019.
- 5.10 The Commission observes that despite speaking orders of EO, respondent DHBVN has neither adjusted the TOU/TOD Rebate for FY 2017-2018 and its 9% interest within the stipulated time frame nor challenged the same in appropriate court of law.
- 5.11 In view of the above facts, the respondent DHBVN is directed to adjust TOU/TOD Rebate for FY 2017-2018 and its 9% interest within two weeks of this order.

5.12 Since the respondent DHBVN has failed to comply with the orders of EO within stipulated time frame, due to which the petitioner had to approach this Commission through instant petition, the Respondent DHBVN is directed to pay ₹50,000/- Court Fee deposited by the petitioner along with ₹15,000 towards litigation expenses to the petitioner within 30 days from the date of this order. The department is at liberty to recover this amount from the respective delinquent officers after following due process.

5.13 The case is disposed of in above terms.

This order is signed, dated and issued by the Haryana Electricity Regulatory Commission on 12/12/2024.

Date: 12/12/2024

Place: Panchkula

**(Mukesh Garg)
Member**

**(Nand Lal Sharma)
Chairman**