

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

Case No. HERC/P. No. 51 of 2024

Date of Hearing : 03/12/2024

Date of Order : 12/12/2024

IN THE MATTER OF:

Complaint under section 142, read with section 146 & section 149 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 non compliance of the order/ direction passed by Ld. Corporate Forum for redressal of consumer grievances (CGRF) Gurugram as well as continuing failure to comply with the direction of order number 4720/2024 dated 12-07-2024 by respondent(s) and for direction(s) to ensure strict compliance of the direction issued by the Corporate CGRF DHBVN Gurgaon vide order dated 05-06-2024 and to impose the penalty HERC (Standard of Performance of Distribution Licensee and Determination of Compensation) Regulation 2020 Schedule – II Sub Clause 20.

Petitioner

M/s Ram Oil Mill, Nangal Chaudhary Road, Narnaul Through its Prop Nitin Kanodia

VERSUS

Respondent:

1. SDO 'OP' City Sub Division, DHBVN, Singhana Road, Narnaul-123001.
2. XEN OP Divison DHBVN Mahavir Chowk Narnaul-123001.
3. SR AO CBO (Commercial Back Office) DHBVN Vidyut Sadan, Vidyut Nagar Hisar-122505

Present

On behalf of the Petitioner

Sh. Akshay Gupta, Advocate

On behalf of the Respondent

1. Sh. Raheel Kohli, Advocate
2. Sh. Tarsem Rana, Associate to Advocate
3. Sh. Mhd. Azruddeen, SDO, DHBVN
4. Sh. Jitender, LDC, DHBVN

QUORUM

**Shri Nand Lal Sharma, Chairman
Shri Mukesh Garg, Member**

ORDER

1. Petition:

- 1.1 That Sh. Nitin Kanodia (hereinafter may be referred as complainant petitioner) S/o Sh. Sushil Kumar Kanodia, is the Prop of Ram Oil Mill, Nangal Chaudhary Road, Narnaul and having an HT industrial electricity connection bearing account number 6050830440 under the jurisdiction of SDO Op City Sub Division Narnaul, Complainant petitioner is the resident of B-F-50, Near Hari Nagar Dipo, VTC: Janakpuri B-1 SO, District West Delhi, Delhi-110058. Complainant petitioner filed a complaint before Corporate CGRF, DHBVN GURGAON on dated 07-06-2024 which was instituted on 11-06-2024 and prayed: Declare the action of the respondent for issuing bill after PDCO and not refunding the ACD Rs. 1118915 illegal, arbitrary and unjustified and be quashed and:
- i. Direct respondent to refund ACD amounting Rs. 1118915 with interest on ACD @ 6.75% from 1-4-2023 to 1-03-2024 and 18% on ACD from 1-3-2024 till realization.
 - ii. Direct respondent to pay compensation @ 100/Rs per day as per the HERC regulation No 50-2020.
- 1.2 That during the hearing on 11.07.2024, Respondent SDO tendered the reply vide his office memo number 966 dated 10-07-2024 and submitted that “it is submitted that the details to waive off the average bill issued amount and to refunding the ACD interest amount after deduction of payable bill amount has been sent to CBO Hisar.
- After the approval of CBO Hisar, This office will send the details of ACD (amount Rs. 1118915) and the penal interest (on this ACD from 08/02/2024 to 08/07/2024 of amount Rs. 83915) to the Division office for necessary action along with the final status of the consumer bill.
- So, the details of total refundable amount to the consumer are as follow:
- a. ACD Amt. Rs 1118915/-
 - b. ACD interest from 01/04/2023 to 08/02/2024 – Payable electricity bill amount= Rs. 49947/-
 - c. Penal interest on ACD from 08/02/2024 to 08/07/2024= Rs. 83915
Total (A+B+C) = Rs. 1252777.
- 1.3 That the Corporate CGRF DHBVN Gurgaon vide order dated 12-07-2024 disposed of the case with direction to respondent SDO “to refund the amount of Rs. 11,18,915/- as ACD and interest on ACD Rs. 49,947/- from 1.04.2023 to 08.02.2024 and penal interest Rs. 83,915/- to the complainant along with final status of his bill as per his office memo number 966 dated 10.07.2024. The forum decided to close the matter”.
- 1.4 That the respondent himself admitted that the average bills issued to complainant petitioner after PDCO as the PDCO was not affected in the system. The respondent in his reply admitted that the claim of petitioner is legitimate.

- 1.5 That the order dated 12-07-2024 was to be complied within 21 days i.e by 03-08-2024 but it's been around 2 months since passing of order dated 12-07-2024 by Ld. Corporate CGRF DHBVN Gurgaon and the same has not been complied with by the respondent SDO as the amount of ACD along with interest and penal interest has not been refunded to complainant as directed by the Ld. Corporate CGRF DHBVN Gurgaon and there has been deliberate and willful disobedience of order dated 12-07-2024 passed by Ld. Corporate CGRF DHBVN, Gurgaon. Respondent is required to refund the ACD 11,18,915 with interest 49,947 (for the period 01.04.2023 to 08.02.2024) and interest 18% P/a from 08.02.2024 till realization as per HERC Regulation 50-2020 but nothing has been paid/ refunded to complainant petitioner so far.
- 1.6 That the respondent has failed to comply with the order passed by Ld. Corporate CGRF DHBVN Gurgaon and forced complainant petitioner to file the complaint Before Hon'ble HERC under Section 142 Read with Section 146 & Section 149 of Electricity Act-2003 for non-compliance of order passed by Ld. Corporate CGRF DHBVN Gurgaon dated 12.07.2024.
- 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 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 if 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:
(Provided that nothing contained in this section shall apply to the orders, instructions or directions issued under section 121.)
- 1.9 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.

1.10 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.”

1.11 That as per HERC (Standard of Performance of Distribution Licensee and determination of compensation) Regulation, 2020 Schedule – II Sub Clause 20 provides that in case of compliance of CGRF is not made within the time framed defined in such order or the regulations specified by the commission in this regard, the compensation of Rs.100/- per day or part thereof is payable.

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 by the Ld. Corporate CGRF DHBVN vide order dated 12.07.2024 and refund the ACD Rs. 1118915 and the interest should be calculated till realization and refund.
- 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 Ld. CGRF on 12.07.2024 as well as continuing failure to comply with the directions and pay the dues to the complainant.
- iii. To direct institution of complaint under Section 142 RW Section 146 of Electricity Act,2003 for failure to comply with the order / direction passed by the Ld. CGRF on dated 05-06-2024 as well as continuing failure to comply with the directions against the respondent(s).
 - iv. To direct the respondent(s) to pay compensation @ Rs.100/ Day for non-compliance of order passed by CGRF within 21 days.
 - v. To award the penalty imposed on respondent in favour 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. Reply of DHBVN dated 12/11/2024

- 2.1 The present reply is being filed on behalf of Dakshin Haryana Bijli Vitran Limited ("DHBVN") by SDO OP City Sub-Division Narnaul ("Answering Respondent") in response to the above captioned petition 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.
- 2.2 It is stated that the order dated 12.07.2024 passed by Ld. CGRF has been duly complied and in this regard a cheque bearing no. 756239 dated 26.09.2024 of Rs. 12,52,777 has been deposited in the account of the Petitioner.
- 2.3 Without prejudice to the above it is respectfully submitted that, recently the Answering Respondent came to know that the figure of Rs. 12,52,777, which was placed before CGRF, is more than the actual amount due to the Petitioner. In fact, till 26.09.2024 (i.e., date on which the said cheque was deposited in the Petitioner's account), the Petitioner was entitled to Rs. 12,23,533. Thus, DHBVN would be posting the excess refund in the Petitioner's account bearing no. 6562722066, as the Petitioner's old account has been permanently disconnected. Table "Table-A" depicting determination of Rs. 12,52,777 (which has been inadvertently remitted to the Petitioner) is annexed. Table "Table-B" depicting determination of Rs. 12,23,533 is annexed.

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

3. Proceeding:

- 3.1 The case was heard on 03/12/2024, as scheduled, in the court room of the Commission.
- 3.2 At the outset, Sh. Akshay Gupta Counsel for the petitioner presented the case and submitted that the orders of the CGRF have not been complied with in stipulated time frame.

- 3.3 To the query of the commission regarding issue of bill to the consumer after disconnection and delay in making refund, the respondents could not submit anything to the satisfaction of the Commission.
- 3.4 Sh. Raheel Kohli counsel for the respondent submitted that the entire amount admissible as per order of the CGRF has already been refunded along with the interest payable till Jul-2024.

4. Commission's Analysis and Order:

After hearing both the parties and going through the record placed on the file, the Commission observes as under:

- a) The operative part of the Corporate CGRF DHBVN Gurgaon order dated 12.07.2024 is as under:

"The Forum directs the SDO(OP) City Narnaul to refund the amount of Rs. 11,18,915/- as ACD and interest on ACD Rs. 49,947/- from 1.04.2023 to 08.02.2024 and penal interest Rs. 83,915/- to the complainant along with final status of his bill as per his office memo."

- b) The respondent-DHBVN in its reply submitted that the order dated 12.07.2024 passed by Ld. CGRF has been duly complied and in this regard a cheque bearing no. 756239 dated 26.09.2024 for Rs. 12,52,777 has been deposited in the account of the Petitioner. Further, it has been submitted that recently the Answering Respondent came to know that the figure of Rs. 12,52,777, which was placed before CGRF, is more than the actual amount due to the Petitioner. In fact, till 26.09.2024 (i.e., date on which the said cheque was deposited in the Petitioner's account), the Petitioner was entitled to Rs. 12,23,533. Thus, DHBVN would be posting the excess refund in the Petitioner's account bearing no. 6562722066, as the Petitioner's old account has been permanently disconnected.
- c) The Counsel for the petitioner argued that CGRF had decided for refund of Rs. 12,52,777, and the present petition has been preferred against non-implementation of CGRF order. The Respondent is liable to pay penal interest up to 26.09.2024 over and above the said refund dated 26.09.2024.
- d) It is pertinent to mention here that the case before the commission is not for adjudication of case on the merit but it is for non-implementation of CGRF orders within stipulated period of 21 days. Further, the order passed by CGRF has not been challenged by the respondents in an appropriate court of law in case they are aggrieved by the order.
- e) Further, it is observed that the case was decided by the CGRF on 12.07.2024 but the refund of the amount as decided by the CGRF was made to the petitioner only on 26.09.2024 providing penal interest up to 08/07/2024, whereas the compliance of the order was to be made within 21 days of the order i.e. upto 02.08.2024.

Therefore, Commission directs the respondent to provide ACD interest from 08/07/2024 to 26/09/2024 @ 18% as per provision of relevant regulations in addition to interest already provided by it.

- f) The Commission observes that the consumer's supply was disconnected on 08.02.2024 but the PDCO was effectuated in the system on 08.07.2024. This is a case of negligence on the part of officials/officers of Respondent Nigam due to which the consumer had to suffer and had to knock the doors of CGRF for relief in the first instance and then had to approach the Commission for implementation of CGRF orders. Nigam has been burdened with higher interest charges and litigation charges in addition to wastage of valuable time of the officers/officials. Therefore, the Commission decides as under:
- i) Balance interest on ACD as elaborated at sr. no. "e" above be refunded to the consumer within 30 days of this order.
 - ii) 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.
 - iii) MD DHBVN is directed to order an enquiry for the said lapses and take appropriate action on the delinquent officers/officials for causing harassment to the consumer and to recover the monetary loss caused to the Nigam from such officers/officials.
- g) The petition is disposed off on 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