



BEFORE THE ELECTRICITY OMBUDSMAN, HARYANA
Haryana Electricity Regulatory Commission
Bays No. 33 - 36, Sector – 4, Panchkula-134109
Telephone No. 0172-2572299; Website: - herc.nic.in
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(Regd. Post)

Appeal No. : 33/2022
Registered on : 16.11.2022
Date of order : 22.12.2022

In the matter of: -

Appeal against the order dated 16.08.2022 passed by CGRF, DHBVN, Gurugram in complaint No. 4221/2022.

Sh. Om Prakash, 100/22, Samaspur Road, Jal Vihar, Village Jharsa, Gurugram
(Through Advocate Ishwar Singh Sangwan)

Appellant/Complainant

Versus

DHBVNL

Respondents

Before:

Sh. Virendra Singh, Electricity Ombudsman

Present on behalf of Appellant:

Advocate Ishwar Singh Sangwan

Present on behalf of Respondents: -

Adv. Sanjay Bansal

Sh. Amit Kamboj, Executive Engineer 'Op' Sub Urban Divn., Circle – II, Gurugram

Sh. Virender Malik, SDO 'Op', S/D. South City, Sector -31, Gurugram

ORDER

I. Sh. Om Prakash, 100/22, Samaspur Road, Jal Vihar, Village Jharsa, Gurugram has filed an appeal against the order dated 16.08.2022 passed by CGRF, DHBVN, Gurugram in complaint No. 4221/2022 through Advocate Ishwar Singh Sangwan. The Appellant submitted as under: -

- i. *The Present Appeal is being filed against the order dated 16.08.2022 passed by Ld. Forum for Redressal of Consumer Grievances, Dakshin Haryana Bijli Vitran Nigam HETRI, Sector-16, IDC Area, Gurugram in case No. DH/CGRF-4221/2022 titled as "Om Prakash Vs. XEN & Anr.", whereby the Ld. Forum illegally directed him to deposit the amount of Rs.2,81,227/- in 3 equal monthly instalments. Copy of impugned order dated 16.08.2022 passed by the Ld. Forum is attached herewith.*
- ii. *That the Ld. Forum without considering the material facts of the case passed the impugned order dated 16.08.2022.*
- iii. *That the Appellant/Complainant humbly seeks setting aside of the impugned order on the following, inter-alia amongst other grounds:*

GROUND OF APPEAL

A. *Because the impugned order dated 16.08.2022 passed by the Ld. Forum in the present complaint, is wrong, against law and facts on file and as such not sustainable in law and hence is liable to be set aside.*

B. *Because the Ld. Forum failed to appreciate the entire facts as argued by the counsel for the Complainant and thereby committed a material error in deciding the above said case by directing the Appellant/Complainant to deposit the amount of*

Rs.2,81,227/- in 3 equal monthly instalments with the Respondents and therefore, the aforesaid order has resulted in miscarriage of justice and hence is liable to be set-aside.

C. Because the Ld. Forum has miserably failed to consider the fact that being a honest consumer, the Appellant/Complainant has been paying all the bills regularly and he is not a defaulter at any time.

D. Because the Ld. Forum has also illegally passed the impugned order dated 16.08.2022 in illegal and haste manner without applying its judicious mind and by ignoring the rules and regulations of the Indian Electricity Act.

E. Because the Ld. Forum has also not considered an application filed by the Appellant/Complainant to review/modify the order dated 16.08.2022 to the effect that the said amount of Rs.2,93,507/- will be paid in 18 equals monthly installments to DHBVN by him.

iv. That the Appellant/Complainant has not filed any other appeal against the impugned order dated 16.08.2022 passed by the Ld. Forum and no appeal is pending either before this Hon'ble Authority or before any Higher Authority.

v. That a proper Authority fee is fixed on the appeal.

PRAYER

It is, therefore, humbly prayed that the record of the case may kindly be summoned from the Ld. Forum, perused and this Hon'ble Authority be gracious enough to set aside the impugned order dated 16.08.2022 passed by the Ld. Forum and to exempt the Appellant/Complainant from paying the said amount of Rs.2,81,227/- with the Respondents being illegal and manipulated, by accepting the present appeal, in the interest of justice.

Any other relief which deems fit and proper may also be passed in favour of the Appellant, in the interest of justice.

- II. The appeal was registered on 16.11.2022 as an appeal No.33/2022 and accordingly, notice of motion to the Appellant and the Respondents was issued for hearing the matter on 06.12.2022.
- III. The hearing was held on 06.12.2022, as scheduled. The counsel for the respondent submitted that he has been recently engaged and requested to give 10 days to submit reply. Accordingly, the matter was adjourned for 22.12.2022.
- IV. The counsel for the respondent vide his mail on 21.12.2022 has submitted reply which is as under: -

1. That the contents of para no. i are correct that the present appeal is being filed against the order dated 16-08-2022 passed by Ld. Forum, but the rest of the contents of para no. i is denied being wrong and incorrect. **As the Ld. Forum observed that the instructions/ regulations/tariff orders issued by the Hon'ble HERC in this regard to charge the complainant and such like consumers on kVAh basis would not change just because the same has not been implemented by the implementing agency in time.** The Forum therefore observed that whatever billing additional amount has become due towards the complainant on account of late implementation of kVAh basis is chargeable and has to be paid by the complainant. It is pertinent to mention here that the Ld. Forum gave an opportunity to the complainant, that if he wants, can deposit the same in 3 equal monthly installments, without any additional surcharge till the payment of 3rd installment.

2. That the contents of para no. ii are denied being wrong and incorrect. As after going through the record available on file and hearing both the parties, Ld. Forum decided to dispose of the case with no relief to the complainant except that if the complainant wants, he can deposit the amount of Rs. 2,81,227/- in 3 equal monthly installments without any additional surcharge till the payment of 3rd installment.

3. That the contents of para no. iii are denied being wrong and incorrect.

REPLY OF GROUNDS OF APPEAL

A. That para no. A is denied being wrong and incorrect.

B. That para no. B is denied being wrong and incorrect. The Ld. Forum directed the SDO to ensure that the bill on kVAh basis gets issued, in the next billing cycle. But at the same time, the Forum also observed that the instructions/ regulations/ tariff orders issued by the Hon'ble HERC in this regard to charge the complainant and such like consumers on kVAh basis, would not change.

C. That para no. C is replied in this way that the Ld. Forum has considered the fact that consumer is not a defaulter at any time, so the Ld. Forum gave an opportunity to the complainant that if he wants, can deposit the same in 3 equal monthly installments without any additional surcharge till the payment of 3rd installment.

D. That para no. D is denied being wrong and incorrect.

E. That contents of para no. E is replied in this way that complainant has filed an application before the Ld. Forum to review/ modify the order date 16-08-2022. In this application the appellant/ complainant has stated that he is ready to pay Rs. 2,93,507/- in 18 equal monthly installments to DHBVN. In this way he is admitting that he is liable to pay the said amount to DHBVN.

4. That contents of para no. iv are matter of record.

5. That para no. v is legal.

The contents of prayer clause are denied being wrong and incorrect as appellant/ complainant has admitted in para E of Grounds of Appeal that he is ready to pay Rs. 2,93,507/- to DHBVN in 18 equal monthly installments, whereas in prayer clause the appellant/ complainant does not want to pay the outstanding amount to Nigam and wants to get exemption from paying the outstanding amount. This is the contrary contention of the appellant/ complainant.

So, in the light of above contention Hon'ble Electricity Ombudsman is requested to kindly dismiss the above appeal. Any other relief to which this Hon'ble Commission deems just and proper, may also be awarded, in the interest of justice.

V. The counsel for the respondent vide his mail on 22.12.2022 has submitted additional reply which is as under: -

1. That it is submitted that as per the directions of the office of Ld. Electricity Ombudsman yesterday, I have received a letter memo no. 675 dated 21-12-2022 from the office of SDO S/ City Sub Division, DHBVN, Gurugram. In this letter the department has submitted that in CGRF order dated 16-08-2022 in case no. 4221/ 2022, the Forum has ordered the SDO to ensure that the complainant gets his bills on KVAH basis in the next billing cycle.
2. That it is pertinent to mention here that due to some error occurred in software earlier which has been removed now. The next billing of Sh. Om Prakash is to be done on KVAH units' basis as per orders of the CGRF.
3. That it is submitted as per the orders of CGRF in concluding para of the order which is produced below, the complainant has to deposit the amount of earlier issued bills in 3 equal monthly installments.

The last para of CGRF Order dated 16-08-2022 is produced below: -

After going through the record available on file and hearing both the parties, the Forum decided to dispose off the case with no relief to the complainant except that if the complainant wants, he can deposit the same in 3 equal monthly installments without any additional surcharge till the payment of 3rd installment.

So, it is, respectfully prayed that the appellant be directed to pay the amount of Rs. 2,81,227/- in 3 equal monthly installments. And the next billing of the appellant will be done on KVAH units' basis as per the order of CGRF.

VI. The appellant via email dated 22.12.2022 has submitted as under: -

“Please find enclosed Application on behalf of the appellant, seeking permission to forgo penalty of Rs.2,81,227/- illegally imposed upon him by the respondents in view of order dated 07.06.2019 passed in case no. HERC/RA-12 of 2019 titled as "Dakshin Haryana Bijli Vitran Nigam, Hisar vs. Gurgaon Industries Association" by the Haryana Electricity Regulatory Commission.”

1. *That the Applicant/Appellant has filed the above noted appeal before this Hon'ble Commission, against the order dated 16.08.2022 passed by the Forum for Redressal of Consumer Grievances, Dakshin Haryana Bijli Vitran Nigam HETRI, Gurugram and the same is now fixed for today i.e. 22.12.2022.*
2. *That the Gurgaon Industries Association (GIA) has filed a case No. HERC/PRO-16 of 2019 before this Hon'ble Commission, seeking the relief to treat the electricity connection upto 100 KW as LT connection as per clause 1.1(a)(iii) and the same was disposed of vide order dated 05.04.2019 by the Hon'ble Commission, imposing a fine of Rs.6,000/- each bill, to each erring officer/official who were responsible for delay so caused in issuing the bills.*
3. *That as per clause c(ii) of order dated 07.06.2019, there was a change in billing methodology in terms of the Sale Circular D-13/2015 dated 18.05.2015 ("Circular") which was issued in compliance with this Hon'ble Commission's Tariff order dated 07.05.2015 on True Up of the ARR for the FY 2013-14, Annual Performance Review for the FY 2014-15 and determination of Distribution and Retail supply tariff for the FY 2015-16 applicable from 01.04.2015 ("Tariff Order"). In terms of the Sale Circular and the Tariff Order, the energy charge of Non-Domestic Category having connected load above 20 KW (LT and HT) and LT Industry Category upto 50 KW were revised to kVAh billing from KWH billing.*
4. *That the Haryana Electricity Regulatory Commission passed an order dated 07.06.2019 in case no. HERC/RA-12 of 2019 titled as "Dakshin Haryana Bijli Vitran Nigam, Hisar Vs. Gurgaon industries Association", waiving off the penalty as illegally imposed upon the GIA.*
5. *That the above noted decision is fully applicable in the present case and so, the Applicant/Appellant is legally entitled to waive of the penalty of Rs.2,81,227/- illegally imposed by the Respondent Nigam upon him in view of the above said order. Hence, the present application.*

In view of the above submissions, it is, therefore, respectfully prayed that the Appellants may kindly be directed to supply legitimate copies of appeal along with the annexed documents to the Applicants/ Respondents or their counsel as early as possible in the present appeal, in the interest of justice.

VII. The hearing was held on 22.12.2022, as scheduled. Both the parties were present during the hearing through video-conferencing. At the outset, the appellant submitted that the connection is of 14 Kw under LT category and should be charged as per Sales Circular no. D 13/2015 dated 18.05.2015 and further submitted that 18 instalments may be allowed in case the billing is as per KVAH. On contra, respondent SDO submitted that all the LT industry connections irrespective of load are to be billed on KVAH basis as per the ibid Sale Circular.

VIII. Further, the operative part of the CGRF order dated 10.08.2022 is as under: -

“The complainant as well as SDO was present. Then complainant was represented by senior lawyer Mr. Sangwan. The subdivision reported, that next bill to the complainant would be issued on KVAH. Mr. Sangwan argued that it was not a fault on the part of his client if the Nigam had failed in issuing the bills on KVAH reading and that even after filing the present case before the Forum in April / May this year, Nigam has not been able to get the bill Changed from kWh to KVAH basis. This Shows how serious the Nigam is towards the genuine requests of the consumers. He further argued that his client should not be forced to pay any amount accrued so far due to lapse on the part of Nigam and the bill on KVAH basis should be payable only from the date It Is correctly Issued on that basis. The Forum observed that it was indeed a lapse on the part of Nigam and directed SDO to ensure that the bill on KVAH basis gets issued in the next billing cycle. But at the same time, the Forum observed that the Instructions / regulation / tariff orders issued by the hon'ble HERC in this regard to charge the complainant and such like consumers on KVAH basis would not change Just because the same has not been implemented by the implementing agency in time. The Forum therefore observed that whatever billing

additional amount has become due towards the complainant on account of late implementation of KVAH basis is chargeable and has to be paid by the complainant. The only relief the complainant is entitled to is that because the amount has been put suddenly in one go, the complainant If so wants, can deposit the same in 3 equals monthly instalments without any additional surcharge till the payment of 3rd instalment.

After going through the record available on file and hearing both the parties, the Forum decide to dispose of the case with no relief to the complainant except that if the complainant wants, he can deposit the same in 3rd equal monthly instalments without any additional surcharge till the payment of 3rd instalment. Case is closed."

- IX. In view of the foregoing discussions, since the addition amount has been charged as per Nigam's instruction/HERC tariff order, the Forum's decision dated 16.08.2022 is in order and therefore, the same is upheld.
- X. In above terms the appeal is disposed off.

Both the parties to bear their own costs. File may be consigned to record.

Given under my hand on 22nd December, 2022.

Dated: 22nd December, 2022

**(Virendra Singh)
Electricity Ombudsman, Haryana**

CC-

Memo. No. HERC/EO/Appeal No.33/2022/

Dated: -

1. Sh. Om Prakash, 100/22, Samaspur Road, Jal Vihar, Village Jharsa, Gurugram.
2. The Managing Director, DHBVN, Vidyut Sadan, Vidyut Nagar, Hisar
3. The Chief Engineer "Op", PO Power House, Rohtak Road, Punjabi Bagh, Delhi – 110035.
4. Legal Remembrancer, Haryana Power Utilities, Shakti Bhawan, Sector-6, Panchkula – 134109.
5. The Superintending Engineer 'Op' Circle – II, DHBVN, Gurugram.
6. The Executive Engineer 'Op' Sub Urban Divn., Circle – II, DHBVNL, Gurugram
7. The SDO 'Op', S/D. South City, DHBVN, Gurugram