



(Regd. Post)

Appeal No. : 70/2023
Registered on: 24.07.2023
Date of order: 21.08.2023

In the matter of:

Appeal against the order dated 13.10.2022 passed by CGRF DHBVNL in case No 3974/2022.

Shri Anil Kumar M/s Shiv Shankar Oil Mill – Sihma, Narnaul, **Appellant**
123001.

Versus

Dakshin Haryana Bijli Vitran Nigam Limited **Respondents**

Before:

Sh. Virendra Singh, Electricity Ombudsman

Present on behalf of Appellant:

Shri Akshay Gupta, Advocate

Present on behalf of Respondents:

Shri Raj Kumar, SDO 'Op.' Sihma

ORDER

A. Shri Anil Kumar M/s Shiv Shankar Oil Mill – Sihma, Narnaul, has filed an Appeal against the order dated 13.10.2022 passed by CGRF DHBVNL in case No 3974/2022. The appellant request for following relief as under: -

1. The appeal is being preferred in view of Regulation 2.49 (B) and 3.16 of Haryana Electricity Regulatory Commission Notification No HERC/48/2020 dated 24/ Jan/2020.
2. The Consumers filled this appeal against the order passed by CGRF DHBVN Gurgaon in case number 3974/2022.
3. The appellant petitioner submitted his consent for opting TOU/TOD Tariff as per Nigam circular in the year 2017, 2018, 2019 and 2020. But respondent didn't allow the benefit of TOU/TOD tariff to petitioner.
4. Since the respondent fails to comply with the Supply Code and various circular issued by the respondent and hence the appellant was forced to file a complaint before CGRF DHBVN Vide case No-DH-CGRF-3974-2022.
5. The appellant petitioner filled a petition in CGRF (DHBVN) Gurgaon on dated 1-01-2022 claiming the benefit of TOU/ TOD which is pending since 2017 to 2021 along with interest.

It is pertinent to mention here that Hon'ble Ombudsman in identical case:

- a. Appeal No-24/2022: - Appeal against the order dated 05.06.2022 passed by CGRF, DHBVN, Gurugram in case No.3970/2022. Sh. Krishan Goyal,

M/s Deepak Cotton, Adampur Mandi, Distt. Hisar Versus DHBVNL read as: -

“Hearing was held on 22.08.2022, as scheduled. During the hearing, both the parties were present through video conferencing. The Counsel for the appellant argued that the rebate of ToU/ToD for FY 2017-18, FY 2018-19, FY 2019-20 and FY 2020-21 along with the interest on delayed payment has not been given by the respondent. Per contra the respondent SDO has submitted that ToU/ToD tariff benefit for the period 2017-18 and 2018-19 has already been adjusted in the bill of consumer. Further, sundry of interest on account of delayed payment for this period has also been prepared vide sundry number 178/243 and the same will be adjusted in the next bill of consumer.

“After going through above facts and discussions, it is observed that the TOU/TOD tariff benefit for the period 2017-2018 and 2018-2019 along with interest as per HERC guidelines has been given to the appellant.”

b. Appeal No-09/2023 titled as Ankit Bansal Versus DHBVN ordered as: -

“After hearing both the parties and going through the record available on the file, the delay is condoned and the respondent SDO is directed to give interest @9% per annum on the delayed payment for FY 2017-18 and 2018-19 as per provision of DHBVN sales circular D-32 of 2019”.

6. The respondent SDO in his reply vide memo no 1867 dated 04.10.2022 submitted the calculation of refund for the period 2017-2018 and 2018-2019 only
7. But TOU –TOD tariff benefit for the period 2019-2020, 2020-2021 was not given to me.
8. Appellant petitioner in his petition to CGRF requested that the benefit should be given along with 18% interest.
9. CGRF rejected the claim of TOU/TOD for the period 2019-2020 because in Sales circular No 32-2019 there is a pre-requisite “This rebate shall be allowed only to the consumer who install smart meter/ smart grid.” But the meter of consumer is TOD enabled and having all the parameters required for this rebate.
10. As per Sales Circular D 29/2020 Para 1. E which read as “It is further clarified that the Trivector meters are not smart meters. However, it is possible to implement TOD Tariff with existing HT Trivector meters being used for AMR”, Smart meter is pre-requisite but TOU benefit can be given on the basis of Trivector meters using AMR.

Prayer: -

It is therefore, respectfully prayed that Hon’ble Ombudsman may kindly be pleased to: -

- i. Accept the appeal of the appellant and the order dated 13-10-2022 passed by Consumer Grievance Redressal Forum, DHBVN, Gurgaon in complaint bearing No 3974/2022// may kindly be set aside and.
- ii. Direct the respondent to pay the interest @ 18% on TOU/TOD benefit paid for the year Oct- 2017 to March 2018 and Oct 2018 to March 2019 from the date this was due and allow the benefit of TOU/TOD for the period Oct 2019 to March 2020 and Nov 2020 to March 2021 along with the 18% interest as per Section 62(6) of Electricity Act 2003.

- iii. Direct the respondent to pay the compensation of Rs 1,00,000 to complainant on account of harassment, mental agony, pain suffered by its functionaries and legal expenses incurred and;
- iv. Pass any other or further order which this Hon'ble ombudsman may deem fit and proper in the facts and circumstances of the case in favour of appellant in the interest of justice.

Condonation of delay: The appellant in condonation of delay application submitted as under:

- a. Section 5 of Limitation Act-1963 read as "Any appeal or any application, other than an application under any of the provision of Order XXI of the Code of Civil Procedure, 1908 (5 of 1908), may be admitted after the prescribed period if the appellant or the applicant satisfies the court that he had sufficient cause for not preferring the appeal or making the application within such period.
 - b. That the Hon'ble Supreme Court, in its number of pronouncements has time and again said that the Court should be liberal in condoning the delay in filing as well as re-filing, as the procedure is the handmaid of justice and the same should act as a lubricant towards the dispensation of justice and not as an obstruction or irritant.
 - c. I didn't receive the certified copy of order so couldn't file the appeal.
 - d. In the present case, the delay in filing the Appeal is absolutely bonafide, on account of various reasons enumerated in the preceding paragraphs and the same may kindly be condoned, in the interest of justice, as there was sufficient bonafide reasons which resulted into the aforesaid delay,
- B.** The appeal was registered on 24.07.2023 as an appeal No. 70/2023 and accordingly, notice of motion to the Appellant and the Respondents was issued for hearing the matter on 21.08.2023.
- C.** The respondent SDO vide email dated 21.08.2023 submitted copy of reply in this matter submitted by him to the respondent XEN vide Memo. No. 6088 dated 21.08.2023, which is reproduced as under:
- The respondent SDO/Op. S/Divn. DHBVN, Sihma comply the order passed by CGRF vide case No. 3974/2022 decided on dated 4.7.2022 by adjusting the ToD/ToU benefit for the financial year 2017-18 and 2018-19 through SCAR No. 272/78 register No. 22 dated 1.8.2022 for Rs. 2,45,978 (1,76,251 + 69,727) posted in consumer bill in the month 9/2022. As per Sales Circular No. D-32/2019 the surcharge given @ 9% on rebate granted so the surcharge is now calculated and comes out to be Rs. 91498/-. The surcharge amount is now adjusted in consumer account vide SCAR No. 146/47 register No. A-1 and to be posted in consumer account in the month of 9/2023. The ToU/ToD rebate for the period 2019-20, 2020-21 was not implemented as per Sales Circular No. 29/2020 the existing meter and grid was not smart. The reply of said appeal is hereby sent to your good office and further necessary action please.
- D.** Hearing was held on 21.08.2023, as scheduled. Both the parties were present through Video conferencing. At the outset, the respondent SDO submitted that the ToD/ToU benefit for the financial year 2017-18 and 2018-19 has already been given in bill of the month 9/2022. Further, as per Sales Circular No. D-32/2019, the interest on delayed payment of the ToD/ToU has been calculated vide SCAR No. 146/47 register No. A-1 and will be posted in consumer account

in the month of 9/2023. The ToU/ToD rebate for the period 2019-20, 2020-21 was not given as smart meter was not installed by the appellant as per provision of Sales Circular No. 29/2020.

E. In view of the above facts and discussions, the delay is condoned and the respondent SDO is directed to ensure to adjust/refund interest in the month 09/2023 on account of delayed payment of the ToU/ToD rebate for the financial year 2017-18 and 2018-19. Further, the rebate of TOU/ TOD for the period 2019-2020 and 2020-2021 is not admissible as smart meter was the pre-requisite for availing TOD tariff and the same was not installed by the appellant. Therefore, the appeal is disposed off accordingly.

Both the parties are satisfied. Appeal is disposed off accordingly.

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

Given under my hand on 21st August, 2023.

Sd/-

(Virendra Singh)

Electricity Ombudsman, Haryana

Dated: 21.08.2023

CC

Memo. No. HERC/EO/Appeal No. 70/2023/2211-2217

Dated: 23.08.2023

1. Shri Anil Kumar M/s Shiv Shankar Oil Mill – Sihma, Narnaul, 123001 (Email shivshankaroilmillnnl@gmail.com).
2. The Managing Director, Dakshin Haryana Bijli Vitran Nigam Limited, Head Office: Vidyut Sadan, Vidyut Nagar, Hisar -125005 (Email md@dhbvn.org.in).
3. Legal Remembrancer, Haryana Power Utilities, Shakti Bhawan, Sector- 6, Panchkula – 134109 (Email lr@hvpn.org.in).
4. The Chief Engineer ‘Op’, Delhi Zone (Email ceopdelhi@dhbvn.org.in).
5. The SE ‘Op’ Narnaul (Email seopnarnaul@dhbvn.org.in).
6. The Executive Engineer ‘Op.’ Narnaul (xenopnarnaul@dhbvn.org.in).
7. The SDO ‘Op’ S/D, Sihma (Email sdoopshima@dhbvn.org.in).