



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.: 72/2023
Registered on: 21.07.2023
Date of hearing: 21.11.2023

In the matter of:

Appeal against the order dated 17.05.2023 in case no. 27/2023 passed by forum for redressal of consumer grievances, UHBVNL, Kurukshetra.

M/s Bhgwati Stone Crusher and others of Jagadhri

Appellant

Versus

1. The XEN 'Op.' Division, Jagadhari
2. The SDO (Operations), S/D, Chhachrauli

Respondents

Before:

Sh. Virendra Singh, Electricity Ombudsman

Present on behalf of Appellant:

Shri Hemant Hans, Advocate

Present on behalf of Respondents:

Shri Sanjay Bansal, Advocate

Shri Kamal Panra, SDO 'Op.' S/D, Chhachrauli, Jagadhari, Yamunanagar

ORDER

A. M/s Bhgwati Stone Crusher and others of Jagadhri has filed an appeal through Shri Hemant Hans, Advocate against the order dated 17.05.2023 passed by CGRF UHBVNL, Kurukshetra in case No. 27/2023. The appellant request for following relief as under: -

1. That the instant Appeal has been filed for modification of the Impugned Order dated 17.05.2023 passed by the Consumer Grievances Redressal Forum, UHBVNL, Kurukshetra whereby the forum has ordered the respondents to follow the instructions issued by the Nigam in sales circular of 2013. The Impugned Order is vague, ambiguous, unclear and liable to be modified to the extent that all electricity bills generated in the name of stone crushers (Appellants) after disconnection in pursuance of the Orders passed by Haryana State Pollution Control Board may be withdrawn and no charges to be levied for the period of disconnection.
2. The brief facts of the case are that the appellants are the stone crushers operators located at Village Nagli, District Yamunanagar, Haryana who were carrying business of stone crusher on the basis of the respective licenses issued by Mines & Geology Department, Government of Haryana.

3. That the stone crushers of the appellants were ordered to be closed by Haryana State Pollution Control Board on the basis of Orders dated 08.03.2022/09.03.2022. As per the said orders, directions were issued to UHBVNL to disconnect the electricity connection of the appellants with immediate effect.
4. That in compliance of the aforesaid orders, the officials of UHBVNL has disconnected the electricity connection of the stone crushers of the appellants. The electricity connections were disconnected on 08.10.2022.
5. That despite the fact that the electricity connections were disconnected, the Department (UHBVNL) kept on issuing electricity bills in the name of stone crushers of the appellants. The electricity bills were issued on the pretext of average electricity consumption. The appellants approached the Office of SDO, Chhachhrauli UHBVNL regarding the issuance of electricity bills despite disconnection. However, no satisfactory reply was provided to the complainant.
6. That the appellants also submitted their grievance regarding issuance of electricity bills on average consumption basis despite disconnection before the Executive Engineer (OP Division) UHBVNL, Jagadhri, Yamunanagar but the grievance of the appellants was never resolved.
7. That since there was no redressal of the grievance of the appellants, the appellants, as the last resort, filed a Complaint before Consumer Grievances Redressal Forum, UHBVNL, Kurukshetra. The Ld. Consumer Grievances Redressal Forum after examining the reply of the respondents has rightly observed that the fixed charges have been levied upon appellants by the Nigam is not satisfactory.
8. That the Ld. Consumer Grievances Redressal Forum has also rightly observed that the respondents have not complied the directions of Haryana State Pollution Control Board in letter and spirit. The findings of Ld. Consumer Grievances Redressal Forum, Kurukshetra is referred for the kind perusal as follows:

“Moreover, the directions of the Haryana State Pollution Control Board have also not been complied with properly as the supply of the premises was to be disconnected to the extent so that the complainant could not further utilize the same for running his stone crusher machinery/apparatus which could lead to defiance of rules under section 31-A of Air (Prevention & Control of Pollution) Act, 1981 rather the supply has been disconnected completely thus the aspects regarding keeping in dark the whole premises leadings to insecurity position have not been deliberated while acting upon the directions of Haryana State Pollution Control Board.”

9. That the Ld. Consumer Grievances Redressal Forum, Kurukshetra has also rightly observed that the wrong charges have been levied upon the Appellants but failed to pass the clear and unambiguous directions to the respondents. That the Impugned Order dated 17.05.2023 passed by Ld. Consumer Grievances Redressal Forum is liable to be modified inter-alia on following mentioned grounds: -

- a) That the Order passed by Consumer Grievances Redressal Forum, Kurukshetra is not capable of being ascertained to the extent of directions given to respondents to follow the instructions of 2013 and because of it the respondents are not rectifying/correcting the bills generated during the period of disconnection.
- b) That it is settled principle of law that a reasoned order should be passed by an adjudicating authority and it should be passed in such a way so that it could be properly communicated to concerned/interested parties but from the bare perusal of Order, the Ld. CGRF has not specified the complete details of instructions issued in 2013.
- c) That Regulation 3.5.2 of Haryana electricity Supply Code of 2014 is referred below:

3.5.2 The consumer shall pay to the licensee within the time specified for the purpose under Regulation 6 after every billing cycle, charges for supply of electricity to the consumer during the billing cycle at the tariff in force.

The bare perusal of above regulation shall reveal that consumer is bound to pay in case there is supply of electricity but in the present case there is no supply of electricity. This fact has been admitted by respondents that electricity was disconnected in pursuance of the orders of Haryana State Pollution Control Board. Hence, the appellants are not entitled to pay any amount during the period of disconnection.

- d) That Regulation 5.6.1 of Haryana electricity Supply Code of 2014 is referred below:

5.6.1 The licensee shall have the right to test any meter and related equipment if there is a reasonable doubt about accuracy of the meter. The consumer shall provide the licensee necessary assistance in conduct of the test. The licensee may check the

*meter in-situ by putting a check meter in series or otherwise.
If required, the licensee may temporarily replace the meter
and take it away for testing.*

It is humbly submitted that electricity was disconnected by respondents and they have miserably failed to exercise their powers; and due to non-exercise of above power, they are still sending bills on average consumption basis which is against the spirit of law.

- e) That it is admitted by the respondents that they have disconnected on the directions of Haryana State Pollution Control Board; and once the electricity connection has been disconnected then respondents cannot charge bill on average consumption basis. In order to elaborate that when the appellants have not even consumed the units than how respondents can charge them on average consumption basis.
 - f) That the electricity connections were terminated by the order of Haryana State Pollution Control Board but the connections are still running in the records of the respondents. If the respondents have duly updated their record than respondents would have never issued electricity bills on average consumption basis.
- 10. That the appellants have not filed any such or similar appeal either this Hon'ble Court or before any other Court of law.
 - 11. That there is a delay of 10 days in filing the present appeal. The appellant is filing an accompanying application seeking condonation of delay. The contents of the accompanying application may kindly be read as part and parcel of the present appeal.
 - 12. That this Hon'ble Court has the necessary jurisdiction to entertain and decide the present appeal.

Prayer:

It is, therefore, respectfully prayed that the present Appeal may kindly be allowed in the interest of Justice:

- 1. For modification of Impugned Order dated 17.05.2023 whereby the Ld. Consumer Grievances Redressal Forum, UHBVNL, Kurukshetra has ordered the respondents to follow the instructions issued in the year 2013 being vague, ambiguous, unclear and liable to be modified to the extent that all electricity bills generated in the name of stone crushers

(Appellants) after disconnection may be withdrawn and no charges to be levied for the period of disconnection.

2. Issuance of any other order or direction which this Hon'ble Court may deem fit and proper in the peculiar facts and circumstances of the present case, may kindly be issued.
 3. Dispense with filing of certified copies of the Annexures and allow their true typed/translated/photostat copies to be taken on record.
- B.** The appeal was registered on 21.07.2023 as an appeal No. 72/2023 and accordingly, notice of motion to the Appellant and the Respondents was issued for hearing the matter on 23.08.2023.
- C.** Hearing was held on 23.08.2023, as scheduled. Both the parties were present during the hearing through video conferencing. The counsel for the respondent SDO requested for one week's time to file the reply being recently engaged. Acceding to the request, the matter is adjourned with direction to the respondent to submit point wise reply of the appeal before next date of hearing and shall now be heard on 07.09.2023.
- D.** The counsel for the respondents vide email dated 03.09.2023 submitted the reply, which is reproduced as under:
1. That the connections of the appellant have been disconnected on dated 8-10-2022 vide SJO No. 52/183, 53/183, 54/183 and 56/183 as per closure order issued by Haryana State Pollution Control Board vide File No. HSPCB-180001/135/2022-Region Yamuna Nagar-HSPCB dated 22-09-2022 in context of violation of norms of HSPCB.
 2. That the respondent department had complied the order issued by HSPCB but the connections was still running in the consumer's ledger record, as PDCO of the connections can only be done on consumer request. As the connections are running in the office record, fixed charges will be levied in the bill of the consumers. It is pertinent to mention here that Fixed charges on any connection are not leviable under 2 condition i.e. temporary disconnection and permanent disconnection, for which application has to be given by the consumer. For the case of temporary connection, cases of temporary connections are being dealt with Sales Circular No. 26/2011 of Nigam.
- As per under clause 4 (vii) of sales circular no. 26/2011
- (a) During temporary disconnected minimum charges shall be payable @ 220/- per KW or part thereof of the connected load.

(b) The industrial consumers seeking temporary disconnection of supply shall submit their written requests giving therein specific reasons for the same to Sub Divisional Officer (Operations) concerned at least one month in advance of the date from which the disconnection is being sought. Such requests for a maximum period of six months shall be examined and decided by concerned Executive Engineer (OP) keeping in view the merits of each case. The request for temporary disconnection beyond a period of six months shall be referred by respective SEs to concerned Chief Engineer CE (OP) for decision. While considering such requests for temporary disconnection, the following guidelines are to be kept in view i.e. which is mentioned in under clause 4 (vii) of Sales Circular No. 26/2011.

Under this clause the merits for initiating temporary disconnection have been mentioned, but for the case of the appellants which constitutes of the violation of guidelines of HSPCB, no clause depicts such merit for temporary disconnection. Hence, as per sales circular no. 26/2011 temporary disconnections of the appellants could not be recommended. So the respondent department has rightly charged the fixed charges for the connections of the appellants, as the connections are still running in the consumer's ledger record. So this appeal may liable to be dismissed on this ground.

On Merits: -

1. That the contents of point no. 1 is replied in this way that the respondent department has followed the guidelines of sales circular no. 26/2011, so the Ld. CGRF also directed the respondent department to give the complainant single phase supply and charge the amount of tariff including fixed charges as per standing instructions of the Nigam.
2. That the contents of point no. 2 is matter of record.
3. That the contents of point no. 3 is matter of record.
4. That the contents of point no. 4 is replied in this way that the connections of the appellant have been disconnected on dated 8-10-2022 vide SJO No. 52/183, 53/183, 54/183 and 56/183 as per closure order issued by Haryana State Pollution Control Board vide File No. HSPCB-180001/135/2022-Region Yamuna Nagar-HSPCB dated 22-09-2022 in context of violation of norms of HSPCB.

5. That the contents of point no. 5 is replied that as per the directions received from the higher office, three phase supply of the connections got disconnected on dated 8-10-2022, but the connections are still running in the consumer's ledger record because fixed charges on any connections are not leviable under 2 conditions i.e. temporary disconnection and permanent disconnection, for which application has to be given by the consumer. But in this case appellants do not fulfill the above said condition. As the connections of the appellants got disconnected in context of violation of norms of HSPCB.

But after that the connections of the appellants got disconnected as per closure order issued by HSPCB, so the average bills issued to the appellants by the respondent department. As the connections are running in the office record, fixed charges will be levied in the bill of the consumers.

The connections of these consumers are disconnected, modems at site are not working and readings are not uploaded to AMR cell due to which the bill of the consumers are being generated on an average basis. But when 2 phase supply of these connections will be re-connected temporarily just so that the modern uploads the readings to the AMR cell and bill of these consumers could be generated on the actual readings in the meter with the correction of previous average consumption bill issued.

The average of electricity bills of the appellants are corrected in August 2023 which are showing in these bills.

6. That the contents of point no. 6 is matter of record.
7. That the contents of point no. 7 is matter of record.
8. That the contents of point no. 8 is matter of record.
9. That the contents of point no. 9 and sub points of point 9 are not admitted and is replied that as per Ld. CGRF order dated 17-05-2023 the respondent department had issued SJO 85/207, 86/207, 87/207 dated 17-05-2023, for restore the supply with single phase for the connections of the appellants. But two number of appellants M/s Bhagwati stone crusher and Hans stone crusher had refused for reconnected the connections and their representative has recorded the same on the SJO. On the other hand the connection of M/s Sai stone crusher has been reconnected.

As per the norms of the Nigam consumers can opt for PDCO for stoppage of fixed charges and then for reconnection, new connection will

have to be applied by the consumer and ACD as per applied load will have to be deposited.

10. That the contents of point no. 10 is matter of record.
11. That the contents of point no. 11 is not admitted.
12. That the contents of point no. 12 is legal.

That the contents of prayer clause is not admitted in view of the submissions given above.

So it is, therefore, prayed that keeping in view the above contentions of the respondent department the present appeal of the appellants may kindly be dismissed. And pass any other order in favour of respondent in the interest of justice.

- E.** Hearing was held on 06.09.2023, as scheduled. Both the parties were present during the hearing through video conferencing. At the outset, the counsel for the appellant submitted that reply received is same as submitted in the CGRF and the bills are being issued to the consumer on average consumption in spite of the fact that supply has been disconnected by order of the Haryana State Pollution Control Board. Per contra, the counsel of respondents stated that average bill was issued initially by the system but now bills have been revised on fixed charges. However, if consumer desires to get disconnected his supply permanently he may submit in writing; as at present supply is disconnected temporarily in compliance of direction of the Haryana State Pollution Control Board and he is liable to pay at least fixed charges on temporary disconnection. Mr. Hans, Advocate requested to direct the respondents to supply the details of bill raised after disconnection of supply and short adjournment to seek instruction from his client to respond on the reply of the respondents. Accordingly, the respondents are directed supply copy of ledger showing the details of bills raised to the appellant after disconnection of supply within seven days, with advance copy to the appellant. The matter is adjourned and shall now be heard on 26.09.2023.
- F.** Hearing was held on 26.09.2023, as scheduled. Both the parties were present during the hearing through video conferencing. The counsel for the appellant requested for short adjournment in view of strike by the bar counsel of Punjab and Haryana High Court. Acceding to the request, the matter was adjourned for 25.10.2023.
- G.** The counsel for the appellant vide email dated 25.10.2023 submitted written submissions, which are reproduced as under:

- a. The brief facts of the case are that the appellants are the stone crushers operators located at Village Nagli, District Yamunanagar, Haryana who were carrying business of stone crusher on the basis of the respective licenses issued by mines & Geology Department, Government of Haryana. That the stone crushers of the appellants were ordered to be closed by Haryana State Pollution Control Board on the basis of orders dated 08.03.2022/09.03.2022. As per the said orders, directions were issued to UHBVNL to disconnect the electricity connection of the appellants with immediate effect.
- b. That in compliance of the aforesaid orders, the officials of UHBVNL has disconnected the electricity connection of the stone crushers of the appellants. The electricity connections were disconnected on 08.10.2022.
- c. That despite the fact that the electricity connections were disconnected, the department (UHBVNL) kept on issuing electricity bills in the name of stone crushers of the appellants. The electricity bills were issued on the pretext of average electricity consumption. The appellants approached the office of SDO, Chhachhrauli UHBVNL regarding the issuance of electricity bills despite disconnection, however, no satisfactory reply was provided to the complainant.
- d. That the appellants as the last resort filed a complaint before Consumer Grievances Redressal Forum, UHBVNL, Kurukshetra. The Ld. Consumer Grievances Redressal Forum after examining the reply of the respondents has rightly observed that the fixed charges have been levied upon appellants by the Nigam is not satisfactory. That the Ld. Consumer Grievances Redressal Forum, Kurukshetra has also rightly observed that the wrong charges have been levied to the Appellants but failed to pass the clear and unambiguous directions to the respondents. That the impugned order dated 17.05.2023 passed by Ld. Consumer Grievances Redressal Forum is liable to be modified to the extent that all electricity bills generated in the name of stone crushers (Appellants) after disconnection be withdrawn and no charges to be levied for the period of disconnection inter alia on following mentioned grounds: -
 1. That regulation 3.5 of Haryana Electricity Supply Code 2014 are referred for the kind perusal of Court: -
 - 3.5 Charges for Supply
 - 3.5.1 The distribution licensee shall recover the electricity charges for the electricity supplied to the consumer as per the tariff

determined by the Commission from time to time in accordance with the provisions of the Act.

3.5.2 The consumer shall pay to the licensee within the time specified for the purpose under Regulation 6 after every billing cycle, charges for supply of electricity to the consumer during the billing cycle at the tariff in force.

That from the bare perusal of above regulation, it shall reveal that consumer is bound to pay in case there is supply of electricity but in the present case there is no supply, this fact is admitted by respondents that, electricity was disconnected by the orders of Haryana State Pollution Control Board. Hence, the appellants are not entitled to pay any amount during the period of disconnection.

2. That in reply before Ld. CGRF, the respondents categorically stated that "As per the directions received from the higher office, three phase supply of the connections mentioned in the complaint got disconnected on dated 18.10.2022 vide SJO, No. 52/183, 53/183, 54/183 and 56/183 but the connections are still running in the consumer ledger account as PDCO of the connections can only be done on consumer request and defaulting amount as per Nigam instructions"

That it is admitted fact that the electricity connections were disconnected upon the instructions of State Pollution Control Board. The point of arguments is when the connections were disconnected upon the instructions of authority and then it was the duty of respondents to get the PDCO done. It shall be imperative to state that respondents has not tendered any circular which shows that in case of disconnection by any authority, the appellant are responsible for applying for PDCO.

Moreover the respondents have power to take the electricity meter as per regulation 5.6.1 of Haryana electricity Supply Code of 2014 which is referred below:

5.6.1 The licensee shall have the right to test any meter and related equipment if there is a reasonable doubt about accuracy of the meter. The consumer shall provide the licensee necessary assistance in conduct of the test. The licensee may check the meter in-situ by putting a check meter in series or otherwise. If required,

the licensee may temporarily replace the meter and take it away for testing.

Hence, the appellants are not entitled to pay any fixed charges during the period of disconnections.

3. That as per the reply submitted by respondents, in two cases a consumer is not liable to pay fixed charge 1. Permanent disconnection, 2. Temporary disconnection. It is humbly submitted that in the present case electricity connections were disconnected upon the orders of State Pollution Control Board. It is further stated that until and unless the order of State Pollution Control Board is challenged, it is a case of permanent disconnection. In such case the appellants are not required to pay for fixed charges which are being levied by the respondents.
4. That the Hon'ble Punjab and Haryana High Court has held in CWP-16149-2016 titled as DHBVN vs Ombudsman, Haryana Electricity Regulatory Commission and another "The appellant consumer is being charged fixed charges in lieu of capacity being made available by the respondent department. These fixed charges are for round the clock facility and in case it is curtailed then full fixed charges cannot be charged"

In view of above, the respondents are not entitled to charge fixed charges from the appellants. It pertinent to mention here that LPA filed by the DHBVN in above cited case was also dismissed by the Hon'ble Punjab and Haryana High Court.

Hence, in the view of above arguments the Appeal be allowed against the Respondents.

It is most humbly submitted that the appeal filed by the Appellant may please be read as part and parcel of the Written Arguments.

- H.** Hearing was held on 25.10.2023, as scheduled. Both the parties were present during the hearing through video conferencing. The counsel for the appellant submitted that written statement has been filed. The respondent submitted that no written statement has been received. The appellants are directed to provide a copy of written statement to the respondent and the respondent may submit the response if any, through XEN Operation concerned. Further, the counsel of the appellants submitted that the connections of the appellants may be disconnected whereas single phase supply of one appellant has been restored by the respondent. It is therefore, the appellants are directed to submit within 10 days

an affidavit individually explaining whether they desire to get their supply disconnected permanently or to continue to reserve capacity equivalent to their sanctioned load keeping in view the closure order of the Haryana State Pollution Control Board. The matter was adjourned for 21.11.2023.

I. In compliance of interim order dated 25.10.2023, the appellants submitted affidavits vide email dated 09.11.2023. The contents of the affidavits are as under:

1. That the deponent is the proprietor/ authorized person for M/s Hans (/Krishna/Sai/Bhagwati) Stone Crusher, who is one of the appellant before this Hon'ble Forum in the above mentioned appeal; and is filing the present affidavit in compliance of the Order dated 25.10.2023 passed by this Hon'ble Forum.
2. That the deponent states that the grievance of the deponent before Ld. CGRF, Kurukshetra as well as before this Hon'ble Forum is with regards to the demands raised by UHBVNL for payment of electricity bills despite the disconnection on the basis of the closure orders passed by HSPCB, Panchkula.
3. That the deponent states that UHBVNL cannot charge any amount from the firm of the deponent since the electricity connection was disconnected in pursuance of the closure orders and there was no consumption of electricity. Even the demand on the basis of average/fixed charges is completely unjustified since there is no supply of electricity.
4. That the deponent states that the deponent is pursuing his legal remedies against the closure order. However, till the point in time the closure order subsists and the stone crusher of the deponent becomes operational again, the deponent does not require any electricity connection in reserve capacity.
5. That the deponent states that the issue as to whether the disconnection of electricity in pursuance of closure order should be treated as permanent or temporary is to be adjudicated by this Hon'ble Forum.
6. That deponent reserves the right to get his electricity connection restored in case the order passed by Ld. Haryana State pollution control Board is revoked or set aside by any authority established under law.

J. The counsel for the respondents vide email dated 20.11.2023 submitted written submissions, which are reproduced as under:

- a. The brief facts of the case are that the appellants are the stone crushers operators located at Village Nagli, District Yamunanagar Haryana who were carrying business of stone crusher on the basis of the respective licenses issued by mines & Geology Department, Government of Haryana. That the stone crushers of the appellants were ordered to be closed by Haryana State Pollution Control Board on the basis of orders dated 08.03.2022/09.03.2022. As per the said orders, directions were issued to UHBVNL to disconnect the electricity connection of the appellants with immediate effect. The copies of orders are annexed as Annexure A-2 of Appeal.

Reply of point no. a is that it is a matter of record.

- b. That in compliance of the aforesaid orders, the officials of UHBVNL has disconnected the electricity connection of the stone crushers of the appellants. The electricity connections were disconnected on 08.10.2022.

Reply of point no. b is that the connections of the appellant have been disconnected on dated 8-10-2022 vide SJO No. 52/183, 53/183, 54/183 and 56/183 as per closure order issued by Haryana State Pollution Control Board vide File No. HSPCB-180001/135/2022-Region Yamuna Nagar-HSPCB dated 22-09-2022 in context of violation of norms of HSPCB.

- c. That despite the fact that the electricity connections were disconnected, the department (UHBVNL) kept on issuing electricity bills in the name of stone crushers of the appellants. The electricity bills were issued on the pretext of average electricity consumption. The appellants approached the office of SDO Chhachhrauli UHBVNL regarding the issuance of electricity bills despite disconnection however, no satisfactory reply was provided to the complainant.

Reply of point no. c is that as per the directions received from the higher office, three phase supply of the connections got disconnected on dated 8-10-2022, but the connections are still running in the consumer's ledger record because fixed charges on any connections are not leviable under 2 conditions i.e. temporary disconnection and permanent disconnection, for which application has to be given by the consumer. But in this case appellants do not fulfill the above said condition. As the connections of the appellants got disconnected in context of violation of norms of HSPCB.

But after that the connections of the appellants got disconnected as per closure order issued by HSPCB, so the average bills issued to the

appellants by the respondent department. As the connections are running in the office record, fixed charges will be levied in the bill of the consumers.

The connections of these consumers are disconnected, modems at site are not working and readings are not uploaded to AMR cell due to which the bill of the consumers are being generated on an average basis. But when 2 phase supply of these connections will re-connected temporarily just so that the modern uploads the readings to the AMR cell and bill of these consumers could be generated on the actual readings in the meter with the correction of previous average consumption bill issued.

The average of electricity bills of the appellants are corrected in August 2023 which are showing in these bills.

- d. That the appellants as the last resort filed a complaint before Consumer Grievances Redressal Forum, UHBVNL Kurukshetra The Ld. Consumer Grievances Redressal Forum after examining the reply of the respondents has rightly beerved that the fixed charges have been levied upon appellants by the nigram is not satisfactory. That the Ld. Consumer Grievances Redressal Forum Kurukshetra has also nightly observed that the wrong charges have been levied to the Appellants but failed to pass the clear and unambiguous directions to the respondents. That the impugned order dated 17.05.2023 passed by Ld. Consumer Grievances Redressal Forum is liable to be modified to the extent that all electricity hills generated in the name of stone crushers (Appellants) after disconnection be withdrawn and no charges to be levied for the period of disconnection inter alia on following mentioned grounds

1. That regulation 35 of Haryana Electricity Supply Code 2014 are referred for the kind perusal of Court

3.5 Charges for Supply

3.5.1 The distribution licensee shall recover the electricity charges for the electricity supplied to the consumer as per the tariff determined by the Commission from time to time in accordance with the provisions of the Act.

3.5.2 The consumer shall pay to the licensee within the time specified for the purpose under Regulation 6 after every billing cycle, charges for supply of electricity to the consumer during the billing cycle at the tariff in force

That from the bare perusal of above regulation, it shall reveal that consumer is bound to pay in case there is supply of electricity but in the present case there is no supply, this fact is admitted by respondents that, electricity was disconnected by the orders of Haryana State Pollution Control Board. Hence, the appellants are not entitled to pay any amount during the period of disconnection.

Reply of point no. d is that as per Ld. CGRF order dated 17-05-2023 the respondent department had issued SJO 85/207, 86/207, 87/207 dated 17-05-2023, for restore the supply with single phase for the connections of the appellants. But two number of appellants M/s Bhagwati stone crusher and Hans stone crusher had refused for reconnected the connections and their representative has recorded the same on the SJO (Annexure R-4 in appeal). On the other hand the connection of M/s Sai stone crusher has been reconnected.

As per the norms of the Nigam consumers can opt for PDCO for stoppage of fixed charges and then for reconnection, new connection will have to be applied by the consumer and ACD as per applied load will have to be deposited.

2. That in reply before Ld. CGRF, the respondents categorically stated that "As per the directions received from the higher office, three phase supply of the connections mentioned in the complaint got disconnected on dated 18 10 2022 vide SJO. No 52/183, 53/183, 54/183 and 56/183 but the connections are still running in the consumer ledger account as PDCO of the connections can only be done on consumer request and defaulting amount as per Nigam instructions".

That it is admitted fact that the electricity connections were disconnected upon the instructions of State Pollution Control Board The point of arguments is when the connections were disconnected upon the instructions of authority and then it was the duty of respondents to get the PDCO done. It shall be imperative to state that respondents has not tendered any circular which shows that in case of disconnection by any authority, the appellant are responsible for applying for PDCO.

Moreover, the respondents have power to take the electricity meter as per regulation

5.6.1 of Haryana electricity Supply Code of 2014 which is referred below:

5.6.1 The licensee shall have the right to test any meter and related equipment if there is a reasonable doubt about accuracy of the meter. The consumer shall provide the licensee necessary assistance in conduct of the test. The licensee may check the meter in-situ by putting a check meter in series or otherwise if required, the licensee may temporarily replace the meter and take it away for testing

Reply of point no. 2 is that the respondent department had complied the order issued by HSPCB but the connections was still running in the consumer's ledger record, as PDCO of the connections can only be done on consumer request. As the connections are running in the office record, fixed charges will be levied in the bill of the consumers till the consumer make the written request to the department for permanent disconnection of electricity supply.

3. That as per the reply submitted by respondents, in two cases a consumer is not liable to pay fixed charge 1 Permanent disconnection, 2 Temporary disconnection It is humbly submitted that in the present case electricity connections were disconnected upon the orders of State Pollution Control Board It is further stated that until and unless the order of State Pollution Control Board is challenged, it is a case of permanent disconnection. In such case the appellants are not required to pay for fixed charges which are being levied by the respondents

Reply of point no. 3 is that as per the regulations of Nigam, till the consumer do not make the written request to the department, connection can not be disconnected permanently.

4. That the Hon'ble Punjab and Haryana High Court has held in 4. CWP-16149-2016 titled as DHBVN vs Ombudsman, Haryana Electricity Regulatory Commission and another "The appellant consumer is being charged fixed charges in lieu of capacity being made available by the respondent department. These fixed charges are for round the clock facility and in case it is curtailed then full fixed charges cannot be charged in view of above, the respondents are not entitled to charge fixed charges from the appellants. It

pertinent to mention here that LPA filed by the DHBVN in above cited case was also dismissed by the Hon'ble Punjab and Haryana High Court.

Reply of point no. 4 is that the contents of point no. 4 is legal.

5. *That the written submission filed by the appellant on 25.10.2023 are with same facts. Moreover, appellant has desired in his argument before the Ld. Electricity Ombudsman to disconnect the connection permanently and has to file an affidavit in this regard.*

So, it is, therefore, prayed that keeping in view the above contentions of the respondent department the present appeal of the appellants may kindly be dismissed. And pass any other order in favour of respondent in the interest of justice.

- K.** Hearing was held on 21.11.2023, as scheduled. Both the parties were present through Video conferencing and argued the matter at length reiterating their written submissions as above mentioned. The same is not reproduced for sake of brevity.
- L.** After hearing both the parties and going through record placed on the file, it is observed that the appellants have prayed to modify the impugned order dated 17.05.2023 to the extent that all electricity bills generated in the name of stone crushers of the appellants may be withdrawn and no charges to be levied for the period of disconnection. The counsel for the appellants submitted that till the closure order issued by HSPCB subsists and the stone crushers become operational again, they do not require any electricity connection in reserve capacity. The issue as to whether the disconnection of electricity in pursuance of closure order issued should be treated as permanent or temporary is to be adjudicated by this Forum.

The counsel for the respondent submitted that the respondent department complied the order issued by HSPCB but the connections were still running in their record consumer's ledger, as PDCO of the connections can only be done on consumer request. As the connections are running in the office record, fixed charges are liable to be levied in the bill of the consumers. The connections of the appellants have been disconnected on dated 8-10-2022 as per closure order issued by Haryana State Pollution Control Board vide File No. HSPCB-180001/135/2022-Region Yamuna Nagar-HSPCB dated 22-09-2022 in context of violation of norms of HSPCB. Further, there is no clear instruction to consider such disconnection as TDCO or PDCO.

M. In view of the above facts and circumstances, the connections of the appellants have been disconnected by the respondent as per closure order issued by Haryana State Pollution Control Board on violation of norms mandated as per section 31-A of Air (Prevention & Control of Pollution) Act, 1981. Regarding issue as to whether the disconnection of electricity in pursuance of closure order issued should be treated as permanent or temporary, I am of considered opinion that keeping in view the eventuality of curing a violation by the consumer, the disconnection of supply of such consumers should be treated as temporary disconnection of supply as defined in clause no. 5 (vi) of UHBVN Sales Circular No. U-26/2011. Therefore, accounts of the appellants may be overhauled and further action in the matter may be taken as per guidelines provided in afore mentioned clause of the aforesaid circular. The impugned order dated 17.05.2023 is modified to this extent and the appeal is disposed of accordingly. Both the parties to bear their own costs. File may be consigned to record. Given under my hand on 23rd November, 2023.

Sd/-

(Virendra Singh)

Electricity Ombudsman, Haryana

Dated: 23rd November, 2023

CC

Memo. No. HERC/EO/Appeal No. 72/2023/ 3586-92 Dated: 23.11.2023

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