



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. : 79/2023
Registered on : 06.09.2023
Date of Order : 18.09.2023

In the matter of: -

Appeal against the order dated 24.07.2023 passed by CGRF, UHBVNL, Kurukshetra in complaint No. 67/2023.

Shri Satish Kumar Seth, Chiranjeev Colony, Ambala Road, Kaithal **Appellant**

Versus

Uttar Haryana Bijli Vitran Nigam Limited **Respondent**

Before:

Sh. Virendra Singh, Electricity Ombudsman

Present on behalf of Appellant:

Shri Arvind Seth, Advocate

Present on behalf of Respondents:

Shri Sandeep Kumar, SDO (Operation), City Sub Division No. 1, Kaithal

ORDER

A. Shri Satish Kumar Seth has filed an appeal through Shri Arvind Seth, Advocate, against the order dated 24.07.2023 passed by CGRF, UHBVNL, Kurukshetra in complaint No. 67/2023. The appellant request for following relief as under: -

1. That the appellant/complainant is having the Electricity Account No. 8063959557.
2. That the appellant / complainant received the monthly electricity consumption for the month of February, 2023 bearing Bill No.806396794704 dated 29.03.2023 for current circle charges amounting to Rs. 4,13,665/-. The appellant was shocked and astonished to know that the respondents have charged/debited an amount of Rs. 2,29,246.52 as "Sundry Charges".
3. That after receiving the said electricity bill, appellant/complainant submitted an application on 10.04.2023 for review of the said bill before

the Sub Divisional Officer, OP City Sub Division No. 1, UHBVN, Kaithal (Respondent No. 2).

4. That it is bring to the kind notice of this Hon'ble Authority that before levying the said illegal amount of Rs. 2,29,246/-, no information was provided and no Show Cause Notice was given to the appellant/complainant/consumer. The Respondent No. 2 after submitting the application provided details of sundry charges. In the said details there was no justification given as to how penalty of 25% has been levied. The sundry charges for the months of July, August, September 2021 have been illegally imposed in the Bill Dated 29.03.2023.
5. That thereafter, appellant/complainant aggrieved with the said demand of illegal amount of Rs. 2,29,246/- filed a complaint before the Consumer Grievances Redressal Forum, UHBVN, Panchkula on 01.05.2023.
6. That in order to defend the said complaint filed by the appellant/complainant, Respondent No. 2 submitted its reply to the Consumer Grievances Redressal forum, UHBVN, Panchkula.
7. That the Consumer Grievance Redressal Forum, UHBVN, Panchkula decided the said complaint filed by the appellant/complainant vide its order dated 24.07.2023 against which the appellant is filing the present appeal before this Hon'ble Authority.
8. That the whole issue in the present case revolves around as to whether the penalty @ 25% for so called exceeded MDI which is for HT Industry as per regulation can be imposed on the consumer who is not a HT Industry Consumer. Moreover, the so-called exceeded MDI in the month of July, 2021, August, 2021 and September, 2021 but the penalty has been imposed in 2023. The question is whether it can be levied in the year 2023 and that too on the basis of the Sales Circular No. 03/23.
9. That the penalty of 25% has been illegally imposed by applying the Sale Circular No. 03/2023 on the alleged MDI exceeds in the month of July, August and September, 2021.
10. That from the bare reading of the Circular UT-17/2021, it is clear that the category of Consumers who were in NDS Category above 50 KW (HT) New, has changed to HT Supply category. However, there is no HT Supply Category in the Electricity Supply Code 2014. The respondent nigan has committed illegality by changing the category without first informing the consumer. Second illegality is there is no clause/provision in the Sales

Circular UT-8/2021 Dated 23.04.2021 to impose penalty charges on HT Supply category as per HT Industry Category. However, for the first time this clause has provided by HERC in Ruling dated 30.03.2022 w.e.f. 01.04.2022. Therefore, the demand for exceeded MDI, which was never informed to the appellant for the July, August and September 2021 months is illegal and against the ruling of HERC. which is incorporated for the first time in Circulars U-07/2022, Clause-14. Similarly, this clause has provided by HERC in Ruling of 30.03.2023, therefore, the demand for 2021 months is illegal and against the rulings of HERC which is incorporated in Circulars U-03/2023, Clause-11.

11. That while replying to the review application filed by the appellant/complainant, the Revenue Accountant, IAP No. 14, UHBVN, Kaithal has intimated vide reply dated 09.06.2023 that penalty charges have been imposed in view of the Sale Circular No. UT 08/2021, Sale Circular No. 17/2021, U-07/2022 and Sale Circular No. 03/2023.
12. That the appellant/complainant is filing the instant appeal before this Hon'ble Authority inter alia on the following grounds: -
 - i) That the imposition of the penalty @ 25% is an illegal and without any base. Respondents have failed to show any circular as to how and under which provisions penalty @ 25% has been imposed for the months of July, August and September, 2021.
 - ii) That in the Sale Circular No. 17 of 2021, it is clear that the consumer above 50 KW (HT) New merged with HT Supply Tarrif has been made. However, there is no HT Supply Category in the Electricity Supply Code 2014. The respondent nigram has committed illegality by changing the category without first informing the consumer. Second illegality is there is no clause/provision in the Sales Circular UT-8/2021 Dated 23.04.2021 to impose penalty charges on HT Supply category as per HT Industry Category. However, for the first time this clause has provided by HERC in Ruling dated 30.03.2022 w.e.f. 01.04.2022. Therefore, the demand for exceeded MDI, which was never informed to the appellant for the July, August and September 2021 months is illegal and against the ruling of HERC. which is incorporated for the first time in Circulars U-07/2022, Clause-14. Similarly, this clause has provided by HERC in Ruling of

30.03.2023, therefore, the demand for 2021 months is illegal and against the rulings of HERC which is incorporated in Circulars U-03/2023, Clause-11.

- iii) That the Sale Circular No. U-07 of 2022 further proves that for the first time in Clause-14 of the Sale Circular No. U-07/2022, it has been prescribed that the charges other than energy and demand charges for NDS Category merged with HT-LT Supply shall be as per the charges applicable for erstwhile HT-LT Industry, therefore, the whole demand of penalty @ 25% on the non-Industry category is an illegal and against the rulings of HREC on the basis of which circulars have been issued.
- iv) That it has been held in the impugned order dated 24.07.2023 that there is lapse on the part of the sub division for not serving the notice to the consumer, therefore, the illegal demand is liable to be set-aside on the ground of principle of natural justice which has been violated. It is proved that no notice was ever been issued to the appellant/complainant, therefore, illegal sundry imposed in the electricity bill for the month of February, 2023 to the tune of Rs. 2,29,246.52 is liable to be set-aside and the respondents are liable to refund the amount of Rs. 2,29,246.52 along with interest @ 18% per annum.
- v) That the said illegal demand is contrary to the Instructions No. 5.33 of the Sales Manual of 2013. Relevant part of the said Sales Manual 2013 is reproduced hereunder for ready reference of this Hon'ble Authority: -

"It is submitted that whenever Sub Division Office of Defendant has to raise any demand, it is mandatory for the Sub Division Office to issue Notice to Consumer in the manner as provided under Sales Instruction No. 5.33 of Sales Manual 2013 of the Defendant-DHBVN. Sales Instruction No. 5.33 is reproduced herein under:

INSTRUCTION NO. 5.33

Notice to consumers before debiting short assessment (SC 22/2006):

The short assessment or penalty pointed out either by the Audit or by the Revenue Section shall be charged only after giving 7 days' notice for any objection particularly in respect of HT consumers

and LT Industrial consumers. While serving the such notice the complete detail of reasons/basis for charging of assessment / penalty, period of assessment, the applicable tariff rates and the complete calculation will be supplied. After receiving the reply from the consumer, the SDO will consider and decide the same by-passing speaking order within 7 days in consultation / concurrence of audit party where ever necessary.

In case, the consumer fails to give any reply or do not respond to the notice within the scheduled time, the amount may be charged through sundry charges and allowance register. A copy of the detail of charges must be attached with the first energy bill in which the amount has been debited. Any officer/official found violating the instructions shall face disciplinary action.

- vi) That the action of the respondents is illegal and arbitrary as before imposing the penalty, no notice was issued to the appellant/complainant and this action is contrary to the Haryana Electricity Regulatory Commission (Electricity Supply Code) Regulations, 2014. Relevant part of the said regulations is reproduced hereunder for ready reference of this Hon'ble Authority: "Haryana Electricity Regulatory Commission, Panchkula, on 08.01.2014 had Notified 'The Haryana Electricity Regulatory Commission (Electricity Supply Code) Regulations, 2014' wherein, Regulation No. 6.10.4 also provides a procedure to be followed by officials/officers of Licensee Company before debiting an amount as 'Sundry Charges' in Consumer Account of a Consumer. The Regulation No. 6.10.4 is reproduced herein:

6.10.4 If the licensee establishes during review or otherwise or as a result of audit observation that a consumer has been under-charged, a 15 days notice shall be served upon the consumer to enable him to contest the demand. However, in case of additional demand being made out by internal audit in respect of any consumer, the officer concerned shall satisfy himself in the matter before giving notice to the consumer. After receipt of reply from the consumer, the licensee shall review the amount charged after taking into account the facts submitted by the consumer. For the amount which is chargeable, after considering reply of the

consumer, the licensee shall recover the amount without levy of surcharge from the consumer by issuing a separate bill and in such cases at least 30 days shall be given to the consumer to pay the bill in case the consumer fails to pay the bill by the due date, he shall be liable to pay, in addition, surcharge for the period of delay.

In present case, the S.D.O Sub Division Industrial Area, DHBVN, has not complied with provisions of Sales Instruction No. 5.33 of Defendant which is mandatory in nature as well as Statutory Regulation No. 6.10.4 of Electricity Supply Code 2014 either due to lack of knowledge or ignorance or intentional avoidance with malafide intentions to cause financial loss to the Plaintiff. The demand of disputed amount of under the impugned Energy Bill dated March, 2021 is totally in contravention of aforementioned Sales Instruction and Regulation and as such, the same is totally violation of the principles of natural justice

- vii) That even otherwise, it is a candid principle of law that no one should be condemn unheard. In present case, the officer of Defendant miserably failed to follow Principle of Audi Alteram Partem'. It is worthwhile to mention herein that even under settled principles of natural justice, Show Cause Notice is required to be served upon a Consumer giving complete detail of reasons/basis for charging of the amount and the compete calculation has to be served and also the objection(s) of the Plaintiff should have been called before demanding the disputed amount by the Defendant. Since, the SDO of Defendant has proceeded against Sales Instruction No. 5.33 of Defendant and Regulation of HERC and also violated the principles of natural justice, therefore, the disputed amount demanded under the Impugned Bill dated March, 2021 is false, wrong, arbitrary, unlawful, not binding upon the Plaintiff and is liable to be quashed or set aside. Importantly the HERC in the tariff order dated 30.03.2021 while directing discoms not to charge penalty on newly merged categories directed as under: -

“The Commission has deliberated upon the issue and in furtherance of the policy of the Government for ease of doing business and no litigation policy, it has been decided to merge HT industry category and HT NDS category into one category i.e. HT

supply as well as LT industry category and LT NDS category into one category i.e. LT supply. The Commission is of the view that two categories having been merged, the mandate given to the Commission for reducing the number of categories is also served. Since, during these testing times Covid-19 pandemic where the industrial consumers are fighting as Corona Warriors to revive the economy, such small steps would go a long way in strengthening the backbone of the industry and revival of the economy. Having said that it has been observed that there are large number of such cases across Haryana, the Commission has decided that as a one-time measure, this issue be settled by charging difference in the applicable tariff without levy of penalty on the date of issuance of notice”

- viii) That it is bring to the kind notice of this Hon’ble Authority that the respondents nigram filed a review petition before the Haryana Electricity Regulatory Commission (HERC) for review of the order dated 30.03.2021 passed by the HERC. In the said review petition respondent-nigram prayed for updating the regulation No. 9 of HERC Supply Code, 2014. In the said review petition, respondent-nigram contended that in the tariff order, some of the exiting categories based on their supply voltage level have been merged into HT and LT supply categories to simplify the retail supply tariff structure.

Due to recategorization of the existing few consumer categories into supply-based voltage categories (i.e. HT and LT Supply Category), operational challenges regarding implementation of the regulatory provisions specified under the HERC Electricity Supply Code Regulations, 2014 and HERC Duty to Supply Regulations, 2016 are being faced. It has been further submitted that some of the provisions of the aforesaid regulations have category specific directions and still acknowledge the previous set of categories, therefore, implementation of the retail supply tariff schedule of the ibid Tariff Order may impose operational and legal risks to Discoms in case of any dispute. It is requested that the appropriate directions may be issued so that such challenges are resolved suitably. In reference to the above-mentioned set of regulations, operational difficulties that may arise during the implementations

of the retail supply tariff schedule of ibid Tariff Order dated 30.03.2021 are listed as under:

- i) Levying of penalty for unauthorized extension of load
- ii) Procedures for billing under special circumstances
- iii) Assessment of energy consumption in case of theft of electricity and unauthorized use of electricity
- iv) Assessment of service connection charges and
- v) Assessment of annual consumption deposit
- vi) Periodicity of the billing of consumers

The Petitioners has submitted that the key issues related to the above highlighted matters, along with the relevant regulations, are detailed as under:

- i) Levying of penalty for unauthorized extension of load:

Under Regulation 9 (Unauthorized extension of load) of the HERC Supply Code Regulations 2014, category-wise directions are given to calculate penalty for unauthorized extension of load. These directions are still specific to the previous set of consumer categories. Consumers of HT NDS may largely be affected due to the overhaul of the tariff structure. The Petitioners have requested that the referred regulations may be suitably updated for seamless implementation of the retail supply tariff schedule in the ibid Tariff Order.

The Commission refused to express any view on the contentions raised by the respondent-nigam on the aforesaid issue which was raised in Para-vi of the order dated 31.03.2022.

In view of submissions made above and the grounds taken in the present appeal, appellant/complainant is humbly praying to this Hon'ble Authority that the appeal may kindly be allowed and modify the order dated 24.07.2023 (Annexure A-5) passed by the learned Consumer Grievances Redressal Forum, UHBVN, Kaithal to the extent that the penalty charged half margin No. 690 dated 31.02.2023 be set-aside and to refund the amount of Rs.2,29,246.52 deposited by the appellant/complainant along with interest @ 18% per annum in the interest of justice.

- B.** The appeal was registered on 06.09.2023 as an appeal No. 79/2023 and accordingly, notice of motion to the Appellant and the Respondents was issued for hearing the matter on 19.09.2023. The date of hearing was rescheduled to 18.09.2023.

- C. The respondent SDO vide email dated 14.09.2023 has submitted reply which is as under:

In this connection, it is intimated that the complainant has a Connection in the name of Sh. Satish Kumar Seth having a A/c No. 8063959557 of S.L 91 KW (101.1 KVA). During the Audit period a half margin No. 60 on dated 31.01.2023 (copy enclosed) was made by Audit Party IAP No. 14 Due to MDI exceed for the month 7/21, 8/21 and 9/21. After that the same amount of half margin Rs. 229246/- was posted in the A/c No of the month 02/2023. After that a Complaint was given by Satish Kumar Seth in this office for verification of meter MDI and review of half margin after that a letter was written by this office vide memo No. 114 on dated 22.04.2023 to SE project Panchkula for providing the meter MDI data since modem is installed in this connection. The same data was provided by the SE project Panchkula to this office. From the half margin MDI data and data provide by SE project Panchkula. The following observation viewed by undersigned.

Month/Year	S/S.1 load section KVA	As per half margin KVA MDI	As per load survey data KVA MDI
7/21	101.1 KW	125.50	119.36
8/21	101.1 KW	136	122
9/21	101.1 KW	124.66	112.24

After that the same was written to chief auditor vide this office memo No. 252 on dated 03.05.2023 to chief auditor for review of half margin. After that the reply was received from RA IAP no.14 vide memo no.772/IAP-14 on dated 11.05.2023 (copy enclosed) in which it is mentioned that it is clear that MDI exceeded more than 5% of sanctioned contract demand of the consumer is 101.1 KVA .So that as per sales circular 02/2020 25% of sop penalty is chargeable .Since as per the data provide by the SE project Panchkula of modem data the MDI of the meter was found exceeded from the sanctioned load on as per Nigam Norms. A letter vide memo no. 561 on dated 08.06.2023 was also written by this office to RA, IAP-14 for clarification of MDI penalty charges on HT-NDS and HT-Industry category. The reply was received from RA, IAP-14 vide their memo no. 787/ IAP-14 dated 09.06.202 in which it is mentioned that as per sales circular UT-08/2021 Sr.no-2 in NDS category consumer above 50 kw (HT) merged with HT supply tariff and submitted that half margin make is correct. So the penalty is charged on this connection vide half margin 60 on dated 31.02.2023 is found correct by the IAP Audit Party so it is submitted that the penalty charged is correct and as per Nigam instruction due to exceed MDI.

D. Hearing was held on 18.09.2023, as scheduled. Both the parties were present through video conferencing. Both the parties argued in the matter at length reiterating their written submissions.

E. After hearing both the parties and record made available on file, it is observed that HERC in its order dated 30.03.2021 approved the Distribution and Retail Supply Tariff to be charged by DISCOMs from their consumers during the FY 2021-22 which was applicable with effect from 01.04.2021 and as per serial number 2 under the heading "Schedule of Tariff for supply of energy" of the order, tariff of Non-domestic supply merged with HT supply tariff. Accordingly, UHBVN circulated schedule of tariff for supply of energy vide Sales Circular No. UT-08/2021 dated 23.04.2021.

The MDI (Maximum Demand Indicator) of the appellant Sh. Satish Kumar Seth having A/c No. 8063959557 of S.L 91 KW (101.1 KVA) exceeded in the month of 7/21, 8/21 and 9/21 but no penalty was charged by the respondent SDO. Later Audit party visited the sub division in the month of January, 2023 and raised half margin of Rs. 229246/- in view of exceeding MDI in the month 7/21, 8/21 and 9/21 and the amount was posted in the appellant's account in month 02/2023.

The counsel for the appellant has contended that whole issue in the present case revolves around as to whether the penalty @ 25% for exceeded MDI which is for HT Industry as per regulation can be imposed on the consumer who is not a HT Industry Consumer. Moreover, MDI exceeded in the month of July, 2021, August, 2021 and September, 2021 but the penalty has been imposed in 2023. From the bare reading of the Circular UT-17/2021, it is clear that the category of Consumers who were in NDS Category above 50 KW (HT) New, has changed to HT Supply category. However, there is no HT Supply Category in the Electricity Supply Code 2014. The respondent Nigam has committed illegality by changing the category without first informing the consumer. Second illegality is there is no clause/provision in the Sales Circular UT-8/2021 Dated 23.04.2021 to impose penalty charges on HT Supply category as per HT Industry Category. The penalty of 25% has been illegally imposed by applying the Sale Circular No. 03/2023 on the alleged MDI exceeds in the month of July, August and September, 2021. Further, Mr. Arvind, Advocate, argued that the respondent SDO did not serve notice upon the consumer to enable him to contest the demand before charging it in the bill of the appellant which is gross violation of the provisions of Sales Instruction No. 5.33 of Defendant which is mandatory in

nature as well as Statutory Regulation No. 6.10.4 of Electricity Supply Code 2014 either due to lack of knowledge or ignorance or intentional avoidance with malafide intentions to cause financial loss to the Plaintiff.

Per contra, the respondent SDO submitted that during the Audit period a half margin No. 60 on dated 31.01.2023 was raised by Audit Party when Audit party observed that MDI had exceeded in the month of 7/21, 8/21 and 9/21. After receiving bill (included the amount of half margin (Rs. 229246/-)), a Complaint was filed by Satish Kumar Seth in his office for verification of meter MDI and review of half margin. Accordingly, the meter data was collected from the SE project Panchkula and the matter along with detail of case was referred to chief auditor for review of half margin. In the reply received from RA, IAP-14 vide their memo no. 787/ IAP-14 dated 09.06.202, it is informed that as per sales circular UT-08/2021 Sr.no-2 in NDS category consumer above 50 kw (HT) merged with HT supply tariff and so, the MDI penalty is charged on this connection vide half margin 60 on dated 31.02.2023 is correct.

- F.** In view of the foregoing facts and discussions, as per the HERC order dated 30.03.2021 with regard to the Distribution and Retail Supply Tariff for the FY 2021-22 and subsequent UHBVN Sales Circular No. UT-08/2021 dated 23.04.2021, tariff of Non-domestic supply merged with HT supply tariff with effect from 01.04.2021 thereby removing the category of NDS as a corollary all terms and conditions that was applicable for HT supply became applicable on erstwhile NDS as well. Reference to the commission order dated 15.02.2023 with respect of schedule of tariff for supply of energy for FY 2023-24, which was circulated in UHBVN vide Sales circular No. U-03/2023, at Note No. 11 does not lend any credence to relief sought by the appellant because the said note was inserted to put to rest any misinterpretation that could have risen because of the merger. In case of HT supply consumer there is a provision that in case the consumer exceeds his Contract Demand in any month by more than 5%, a surcharge of 25% will be levied on the Sale of Power (SOP)/monthly minimum charges. Since the appellant exceeded his contact demand (MDI) by more than 5% in the month of 7/21, 8/21 and 9/21, a surcharge of 25% is chargeable on the Sale of Power (SOP) in these months. Therefore, contention of the appellant is not admissible. However, there is negligence on the part of the respondent that a notice as per instructions has not been served before charging the half margin, for which Superintending Engineer Operation Kaithal is directed to get enquire

into the matter thoroughly and to initiate departmental disciplinary proceeding against delinquent official/ officer. The appeal is disposed off accordingly.

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

Given under my hand on 18th September, 2023.

Sd/-

(Virendra Singh)

Electricity Ombudsman, Haryana

Dated: -18th September, 2023

CC-

Memo. No. HERC/EO/Appeal No. 79/2023/ 2638-44 Dated: 22.09.2023

1. Shri Satish Kumar Seth, Chiranjeev Colony, Ambala Road, Kaithal (Email arvindseth@lawyer.com).
2. The Managing Director, Uttar Haryana Bijli Vitran Nigam Limited (UHBVNL) Vidyut Sadan, IP No.: 3&4, Sector-14, Panchkula (Email md@uhbvn.org.in).
3. Legal Remembrancer, Haryana Power Utilities, Shakti Bhawan, Sector- 6, Panchkula – 134109 (Email lr@hvpn.org.in).
4. The Chief Engineer 'Op', UHBVN, Panchkula, IP No.: 3&4, Sector-14, Panchkula (Email ceoppanchkula@uhbvn.org.in).
5. The Superintending Engineer 'Op' UHBVN Kaithal, Near Dr. Ashwani Garg, Dhand Road Kaithal (Email seopkaithal@uhbvn.org.in).
6. The Executive Engineer (Operations), UHBVN, Kaithal, 132 KV sub-station Kaithal (Email xenopkaithal@uhbvn.org.in).
7. The SDO 'Op' Sub Division No.1, UHBVNL Kaithal, Rajiv Gandhi Vidyut Bhawan Pehowa Chowk, Kaithal (Email sdoopno1@uhbvn.org.in).