



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 : 89/2023
Registered on : 18.10.2023
Date of Order : 31.10.2023

In the matter of: -

Appeal against the order dated 18.08.2023 passed by CGRF DHBVNL, Gurugram in case No. 4547/2023.

M/s Telephone Exchange (BSNL) Khori, BSNL Telephone Exchange, **Appellant**
Rewari

Versus

1. The Executive Engineer Operation Division, DHBVN, Dharuhera **Respondent**
2. The SDO Operation, Sub Division Pali Gothra, DHBVN, Dharuhera

Before:

Sh. Virendra Singh, Electricity Ombudsman

Present on behalf of Appellant:

Shri Vijender Singh, SDOT Jatusana & Kosli BSNL
Shri Shiv Shankar Verma, JTO

Present on behalf of Respondents:

Shri Upendra Kumar, SDO Operation, Sub Division Pali Gothra

ORDER

A. M/s Telephone Exchange (BSNL) Khori has filed an appeal through Shri Vijender Singh, SDOT Jatusana & Kosli BSNL, Rewari against the order dated 18.08.2023 passed by CGRF DHBVNL, Gurugram in case No. 4547/2023. The appellant request for following relief as under: -

1. It is submitted that DHBVN Subdivision Gothra Team shifted the electricity connection of BSNL Telephone Exchange Khori from AP supply to DS supply on dated 04.02.2014 as per BSNL request. While executing this work, a sparking occurred in one phase of meter and the electric supply of blue wire phase was blocked due to this sparking and melted the screw which was not sending the supply properly and was not able to be reopened. The guard asked to the DHBVN team that Electric supply is essential for BSNL Telecom Services. In these circumstances the said phase was connected temporarily by DHBVN team without the knowledge, information or consent of Officers concerned of BSNL Exchange Khori.

Only BSNL contractor's guard was present on duty. When our guard raised objection on this temporary arrangement of electric supply then the DIIBVN team assured to our guard that they have resolved the fault and said NDS meter shall be replaced within a week. It is stated that only BSNL Contractor's guard was present on duty and no other staff from BSNL was present at that time. Hence, occurrence of this direct connecting of the phase was not in the knowledge of our officers concerned. It is to be mentioned that our guard was not a technician and having no knowledge regarding the three phase electricity connectivity.

2. DHBVNL Rewari Vigilance team inspected the BSNL Telephone Exchange Khori on dated 07.02.2014 and recorded in the LL-I check report that blue phase of electric meter was directly connected, case booked under section 135 of EA 2003. It seemed that on the other hand the DHBVN Team informed the DHBVN vigilance team for the above said direct supply and the vigilance team check the site after two days and impose Rs. 633488/- . That the DHBVN Vigilance team did not wait for the reaching of concerned BSNL JTO who assured them on Mobile to reach in the Exchange to associate with the inspection but the team did not wait and took the signature of the guard on the LL-1 who was non technical and not authorized for the same.
3. We had represented to SE OP DI IBVNL, XEN Vigilance, DHBVNL Rewari on dated 11.02.2014 to review the inspection report. SE DI IBVN Rewari had constituted a committee of three officers vide his office order no. 74 dated 20.02.2014 and 100 dated 10.03.2014 to give the report.
4. The three member committee gave their report on dated 24.03.2014. In which it was clearly mentioned that one phase block of meter was burnt internally due to spark. The consumer supply was disconnected. To restore the supply someone having good knowledge of EB connection had joined one phase directly as supply was for essential for service of Telecom. There seemed no malafide intention of Consumer, being Govt of India Enterprises. They also mentioned that supply of consumer was being shifted from AP to DS on dated 04.02.2014.
5. SE DHBVN Rewari had decided the case as per above investigation report vide SE/OP Circle DHBVN, Rewari office letter no. 48/13A-7 theft case/ReNo1-1 dated 11-7-2014 (same has been annexed in memo no 918 dated 13.06.2013 memo regarding representation for review of the assessment of licensee of theft under section -135 case of BSNL Khori

Exchange. The report said that meter block on one phase was burnt. Under forced conditions, one phase was connected directly to restore the supply.

6. Further in CA DI IBVN Pali Gothra Sundry register the following was noted: - "G021-0091, Telephone Exchange received a LL-1 no. 2443/4 dated 07.02.2014. The above premises checked by AD V Sh. Ashok Kumar Sharma theft case. Assessment 463488/- + compendium 170000/- total 633488/-. Consumer paid the 50% amount deposited Rs. 231744/- vide dt 26.02.2014 as per SE Rewari memo no. 48/BA-7 theft case/ReNo1-1 dated 11-7-2014 so A/C overhaul. So wrongly charged so Adjustable in the consumer A/C. Because on representation of BSNL, a Committee was constituted vide no. 74 dt 20.02.2014 o/o SE (OP) Circle Rewari, not chargeable.
7. As per SDO(OP) DHBVN Gothra letter 6206/CA dated 09.02.2016 received in BSNL SDOT Jatusana on dated 05.03.2016, BSNL received a notice of Rs 6,33,488/- as amount charged by DHBVN audit party. BSNL had represented to SDO OP DI IBVN Gothra on dated 07.04.2016 vide letter No. JTS/RWR/SDOT/Electrical1/83 for withdrawing it as per SE OP DI IBVN Rewari report vide SE/OP Circle DHBVN, Rewari office letter no. 48/I3A-7 theft case/ReNo1-1 dated 11-7-2014.
8. Alter that, the consumed bills were being sent by DHBVN to BSNL and same were paid by BSNL since last six years e.g. April 2022.DHBVNL again imposed Rs. 6,33,488/- in the electricity bill of MAY-2022 as sundry Charges. SDO OP DHBVN Contra has also written to XEN OP DHBVN Dharuhera vide his letter no. 918 dated 13.06.2023 for withdrawal of this amount. We had represented the above said issues to all concerned DHBVN Officers but issue remain unsolved. Finally, we complaint to CGRF Gurugram, vide complaint no 4547/2023, which has been rejected by the Forum on account of issue being under section 135 and beyond their jurisdiction. It is clearly specific stated that the present issue was not related to section 135 and same has been opined by the SE on the basis of committee report.
9. When the case was already decided by SE OP DFIBVN Rewari in Year 2014 and all penalty amounts were withdrawn by the Department, it is stated that the DHBVNL has already abandoned this amount in year 2016 but now they are reclaiming the said amount again which is not justified.

10. It is to submit that BSNL being a 100% Government owned organisation, there is no personal interest and benefit of anyone being involved in such type theft.

It is therefore humbly prayed that the Hon'ble Electricity Ombudsman, HERC, Panchkula are requested for waving this amount of Rs.6,33,488/- + surcharge from electricity bills of Acc no. 5506852000, in the name of Telephone Exchange, Bus Stand Khori. Further requested that the monthly consumed bills may be sent and same shall be deposited by BSNL in the interest of justice.

B. The appeal was registered on 18.10.2023 as an appeal No. 89/2023 and accordingly, notice of motion to the Appellant and the Respondents was issued for hearing the matter on 31.10.2023.

C. The respondent XEN vide email dated 27.10.2023 has submitted reply which is as under: -

In this reference it is intimated that an appeal filed by SDO BSNL Jatusana & Kosli before Hon'ble ombudsman HERC Panchkula was received in this office.

In this regard, it is submitted that the consumer premises was checked by Sh. Ashok Sharma SDO Vigilance Rewari vide LL-I No. 4/2443 on dt. 7.02.2014 and found that the blue phase of meter was burnt and supply was running directly (Copy of LL-I attached at Annexure A). Accordingly, the case was dealt under section (135) of Electricity Act 2003 and notice was issued to consumer by SDO (OP) S/Divn. Gothra vide office memo, no. 2724/CA dt 11.02.2014 and memo. no. 2725/CA dt. 20.11.2014 for deposition of assessment and compounding amount (Assessment of Rs. 463488 & Compounding of Rs.170000/-) on account of theft of electricity. SHO, I&P, Rewari was also requested to lodge FIR against the consumer vide SDO (OP) S/Divn. office memo no. 2726/CA dated 11.2.2014.

Further consumer has raised issue to the SE (OP) Circle Rewari on dated 7/2/2014. In this regard, SE (OP) Circle Rewari constituted committee to review the subject cited matter vide O/O No. 100 dated 10.03.2014 and the committee submitted report vide ch.73/C-11-84 dated 24.03.2014 in the above matter. Thereafter, SE(OP) Circle DHBVN, Rewari decided the above case vide memo, no. Ch.-48/BA- theft case/RC/Vol-1 dated 11/7/2014 that the meter block was burnt on one phase and under forced circumstances consumer used the supply directly on that phase, So there seems no malafide intention of the consumer.

Thereafter, the audit party pointed out the above amount vide HM. No. 18/184 dt. 27/1/2016 that this amount shall be charged in consumer account.

Audit party again visited in the m/o 12/2021 and issued a fresh HM regarding un-posted amount vide HM No. 93/119 dt. 14/1/2021 and the same was posted in consumer bill in the month of May-2022.

Consumer raised the grievance before Hon'ble Corporate CGRF, DHBVN, Gurugram for withdrawal of audit Half Margin charged in his account. The case was heard by Hon'ble Corporate CGRF, DHBVN, Gurugram vide case no. D/CGRF/4547/2023 dated 16/08/2023. The Hon'ble forum passed the order on 18/08/2023 which is reproduced as under: -

“After considering the reply of the SDO (OP) Gothra as above, the Forum observed that this is a case of recovery of amount of Rs. 633488/- on account of theft of electricity for which the procedure be followed as the case falls under section 135 of electricity Act 2003 and this is beyond the jurisdiction of this Forum. The case is rejected and closed. SDO (OP) S/Div. Gothra is directed to deal with the case as per section 135 of the electricity Act.”

In compliance of the order passed by Hon'ble CGRF, the consumer was asked vide memo no. 4176 dated 19.09.2023 to make payment of amount charged in his bill to avoid any disconnection. But the compliance is still pending.

It is humbly submitted that the theft case under section 135 of Electricity Act, 2003 is beyond the jurisdiction as per the provisions of the electricity Act theft case falls under the jurisdiction of Additional Session Judge/Special court.

- D.** Hearing was held today, as scheduled. Both the parties were present during the hearing through video conferencing. At the outset, the appellant briefed the appeal and submitted that the supply was changed from AP to DS feeder on 04.02.2014. The vigilance team checked the connection on 07.02.2014 and found one phase of supply connecting direct by passing the meter and declared a case of theft of electricity. The department represented to SE Operation Rewari and a committee was constituted who submitted their report which states that it was done just to restore the supply in the premises being essential service and there seems no malafide intention of the consumer being Government Department. Per contra, the respondent SDO submitted that the connection on 07.02.2014 was checked by vigilance and declared a case of theft of electricity. Accordingly, notice of assessment and compounding was issued and FIR also stand lodged under Section 135. Further, he submitted that the case under Section 135 are beyond the jurisdiction of Electricity Ombudsman.

As per clause 2.8 of Haryana Electricity Regulatory Commission (Forum and Ombudsman) Regulations, 2020 provides that

Consumer grievance means & includes any complaint relating to any fault, imperfection, short coming, defect or deficiency in the quality, nature and manner of service or performance in pursuance of a license, contract, agreement or under Electricity Supply Code or in relation to Standards of Performance specified by the Commission including payment of compensation or billing disputes of any nature or recovery of charges by the licensee and matters relating to the safety of the distribution system having potential of endangering the life or property. However, the matters pertaining to Open Access granted under the Act and Section 126, 127, 135 to 140, 142, 143, 146, 152 and 161 of the Act shall not form grievance under these regulations.

E. In view of the above, it is observed that the vigilance during the checking the connection of the appellant on dated 07.02.2014 found blue phase of the meter bypass and accordingly, considering the case of theft of energy the respondent SDO has accessed the amount of penalty under Section 135 of the Electricity Act, 2003. Since the matter under Section 135 is beyond jurisdiction of Electricity Ombudsman as per clause 2.8 of the HERC (Forum and Ombudsman) Regulations, 2020, the order dated 18.08.2023 passed by the CGRF, DHBVN, Gurugram is upheld and the appeal is disposed off accordingly, with liberty to take efficacious remedy as available to the applicant before competent authority in accordance with law.

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

Given under my hand on 31st October, 2023.

Sd/-

(Virendra Singh)

Electricity Ombudsman, Haryana

Dated: 31.10.2023

CC-

Memo. No. HERC/EO/Appeal No. 89/2023/ 3283-89

Dated: 03.11.2023

1. M/s Telephone Exchange (BSNL) Khori, BSNL Telephone Exchange, Rewari (Email sdophonesrwr@gmail.com).
2. The Managing Director, Dakshin Haryana Bijli Vitran Nigam Limited, 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 'Operation', Dakshin Haryana Bijli Vitran Nigam Limited, Hisar Zone, Hisar (Email ceophisar@dhbvn.org.in).
5. The Superintending Engineer/Operation Circle, Rewari (Email seoprewari@dhbvn.org.in).
6. The Executive Engineer Operation Division, DHBVN, Dharuhera (Email xenopdharuhera@dhbvn.org.in).
7. The SDO Operation, Sub Division Pali Gothra, DHBVN, Dharuhera (Email sdooppaligothra@dhbvn.org.in).