



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
E-mail: eo.herc@nic.in

(Regd. Post)

Appeal No : 92/2023
Registered on : 18.10.2023
Date of Order : 06.12.2023

In the matter of: -

Appeal under Section 42 (6) of the Electricity Act, 2003 read with Regulation 3.16 of Haryana Electricity Regulatory Commission (Forum and Ombudsman) Regulations, 2020 against the order dated 04.08.2023 passed by CGRF DHBVNL, Gurugram in case No. 4374-R/GGN/2023.

Shri Bhola Ram, M/s Bansal Cotton oil & General Mills, Kalanwali,
Sirsa

Appellant

Versus

1. The Executive Engineer Operation, DHBVN Dabwali
2. The SDO Operation, Sub Division, DHBVN Kalanwali, Sirsa

Respondent

Before:

Sh. Virendra Singh, Electricity Ombudsman

Present on behalf of Appellant:

Shri Akshay Gupta, Advocate
Shri Sanjeev Kumar Chopra

Present on behalf of Respondents:

Shri Sanjay Bansal, Advocate
Shri Ankit Kamboj, SDO Operation, Sub Division, DHBVN Kalanwali, Sirsa

ORDER

A. Shri Bhola Ram, M/s Bansal Cotton oil & General Mills has filed an appeal through Shri Akshay Gupta, Advocate and Shri Sanjeev Kumar Chopra against the order dated 04.08.2023 passed by CGRF DHBVNL in case No. 4374-R/GGN/2023. The appellant request for following relief as under: -

1. That Sh. Bhola Ram of M/s Bansal Cotton Oil & General Mills, Kalanwali, Sirsa is a consumer of DHBVN under HT category bearing account no. KIHT – 0004 in Sub Division ‘OP’ Kalanwali. He filed a complaint for redressal of his grievances before the Corporate Forum for Redressal of Consumer Grievances, DHBVN, Gurugram (hereinafter referred to as CGRF). Contents of the complaint mainly included following three (3) issues:

- i) Interest on ACD as per instructions of the Nigam has not been paid

- ii) Full rebate against TOU/TOD has not been given which was due from 2017 to 2019.
 - iii) Because the unit is situated beyond Municipal Limits, the MC Tax is exempted but not only that it has been charged wrongly it has not been refunded also till date.
2. That Ld. CGRF passed an order on dated 27.02.2023 which was perverse and bad in the eyes of law and therefore the petitioner filed an appeal before the hon'ble Electricity Ombudsman. The appeal was registered as 34/2023 and an order was passed on dated 01.05.2023. The concluding para of the order is reproduced as under for ready reference:
- “After hearing both the parties and facts brought on record, it is observed that the corporate forum has erred in deciding the instant appeal as same has been decided without considering the facts of the case and wrongly directed the complainant to file his case before the Chairman Zonal CGRF, DHBVN, Hisar. Therefore, the matter is remanded back to the corporate forum for relook and deciding the prayer of complainant on merit by applying relevant instructions of HERC Regulations / Nigam”.*
3. That the complaint was again registered at Corporate CGRF of DHBVN vide case number DH/CGRF/4374-R/2023 on dated 12.05.2023 and listed for hearings on 01.06.2023, 09.06.2023, 26.06.2023 and 26.07.2023. The Ld. CGRF passed an order dated 04.08.2023 without any arguments having been allowed and closed the matter in a hurry to dispose it off. This impugned order is practically an incomplete and inconclusive order in terms of the legal language, is bad in the eyes of law and is liable to be set aside.
4. That the Petitioner/Complainant had raised three (3) issues, as also listed in para “1” above but the order dated 04.08.2023 misses out completely on the issue *“Full rebate against TOU/TOD has not been given which was due from 2017 to 2019”*. Apart from this, despite the assurance having been given by the respondent no. 1 before the Ld. CGRF as well as before the Electricity Ombudsman vide his replies, the Municipal Tax levied has not yet been refunded to the complainant. There are no specific directions to the respondents on these genuine grievances by the Ld. CGRF which has forced the complainant to come before the hon'ble Electricity Ombudsman.

Brief Facts of the case:

1. Complainant / Petitioner Sh. Bholu Ram of M/s Bansal Cotton Oil & General Mills, Kalanwali has an electricity connection under HT category vide account number KIHT – 0004 under Kalanwali subdivision of DHBVN under the control of Executive Engineer Operation, Dabwali Division (respondent nos. 1 & 2 respectively).
2. That the electricity connection is for running of the industrial unit situated outside the boundary of municipal limits
3. That the connected load of the industrial unit is 331 kW with a contract demand of 367 kVA
4. That the supply runs through a HT CT/PT Meter
5. That the complainant had filed a complaint before the Ld. CGRF raising three (3) nos. grievances listed as under:
 - i) Interest on ACD as per instructions of the Nigam has not been paid to him
 - ii) Full rebate against TOU/TOD has not been given which was due from 2017 to 2019 vide DHBVN Sales circular nos. 29/2017 and 32/2018
 - iii) Because the unit is situated beyond Municipal Limits, the MC Tax is exempted but it has been charged wrongly and also that it has not been refunded till date despite regular persuasion.
6. That the complaint filed before Ld. CGRF was given a case no. 4374/GGN/2022
7. That the matter could have been easily resolved at the level of Ld. CGRF in January 2023 itself when the complaint was lying there and SDO Kalanwali had submitted a detailed reply vide his office memo no. 64 dated 10.01.2023.
8. That a perusal of this reply dated 10.01.2023 filed before the Ld. CGRF reveals that it contained details of the refund of M Tax, ED, Rebate of TOU/TOD and the interest on ACD of five nos. firms i.e. the present complainant M/s Bansal Cotton Oil & General Mills and 4 nos. other firms M/s Suresh Cotton Mills, M/s Swaran Oil Mills, M/s Shivam Cotton Factory & M/s Jagdambey Trading Company.
9. That as per this reply, the firms M/S Swaran Oil Mill, M/S Shivam Cotton Factory and M/S Jagdambey Trading Company had the issues of refund of Electricity Duty (ED) only whereas the other two firms M/S Bansal Cotton Oil & General Mills (present complainant) and M/S Suresh Cotton

Mills had the issues of refund of Interest on ACD, M Tax and rebate of TOU/TOD also.

10. That as per this exhaustive reply of the SDO Kalanwali, following amounts due for refund were intimated to the Ld. CGRF:

i)	M/S Bansal Cotton Oil & General Mills	
	ED (Interest on ACD)	= 123273/-
	M Tax	= 544767/-
	TOU/TOD rebate	= 684985/-
	Total	= <u>13,53,025/-</u>
ii)	M/S Suresh Cotton Mill	
	ED	= 239850/-
	TOU/TOD	= 801550/-
	Total	= <u>1041400/-</u>
iii)	M/S Swaran Oil Mill	
	ED	= <u>489425/-</u>
iv)	M/S Shivam Cotton Factory	
	ED	= <u>85178/-</u>
v)	M/S Jagdambey Trading Company	
	ED	= <u>60887/-</u>

11. That on the basis of the above referred reply of the SDO, Ld. CGRF accepted the details and ordered refunds in 4 nos. cases except in the case of present complainant M/S Bansal Cotton Oil & General Mills (case no. 4374)

12. That in case no. 4374 of the present complainant, the Ld. CGRF passed the following order:

“Proceedings were held on 14.02.2023. SDO as well as complainant were present on telephone. Both the parties argued in length. The Forum observed that as per Regulations of HERC (1st Amendment) Regulation, 2022 dated 06.04.2022 which read as 2.8.1 “The Corporate Forum shall have the jurisdiction to dispose all the monetary disputes of an amount exceeding Rs. 3 lakhs in each case. Provided that the complaint/representation is made within 2 years from the cause of action”. The Forum decided to dispose of the case with the direction to the complaint to file his case before Chairman Zonal CGRF, DHBVN Hisar as the case lies under his jurisdiction. The case closed”.

13. That it was shocking to read this unjust and perverse order of the Ld. CGRF dated 27.02.2023. Clearly knowing that the disputed amount was more than Rs. 3 lacs, it was not understood on what grounds the

impugned order was passed directing the complainant to go before the Zonal Forum, which had the jurisdiction to hear the disputes only up to Rs. 3 lacs.

14. That the complainant filed an appeal before the hon'ble Electricity Ombudsman against the above mentioned impugned order. The appeal was registered as Appeal No. 34/2023.
15. That vide order dated 01.05.2023, the hon'ble Ombudsman remanded back the case to the Ld. CGRF at Gurugram and it was listed again at Ld. CGRF as case no. 4374-R on dated 12.05.2023.
16. That hearings were held on 01.06.2023, 09.06.2023, 26.06.2023 and 26.07.2023. The last proceedings were held on 26.07.2023 at Sirsa. The SDO submitted his reply vide office memo No. 3393 dated 26.07.2023 a copy of which was also given to the Complainant. The complainant apprised the Ld. Forum that this reply was the same as had been submitted before the hon'ble Ombudsman vide memo No. 1608 dated 28.04.2023, which states as under:

1. ***Issue:*** *Unit of complainant is situated outside the municipal limit and as per Regulation MC Tax is not chargeable in the electricity bill of the complainant but MC tax was levied on the electricity consumption of his unit from the date of connection.*

Reply there of: *In this issue it is kindly submitted that the unit of the Complainant is situated out the Municipal limit and the MC tax is not chargeable to the electricity consumption in monthly bills. And this office will adjust the already levied MC tax in the complainant's electricity account in the upcoming monthly bills as per Nigam's commercial instructions.*

2. ***Issue: TOU / TOD*** *tariff benefit for the year 2017 to 2019 was not given to the complainant in complete.*

Reply there of: *In this issue it is kindly submitted that as per Nigam's guidelines the complainant was to be submitted a representation to the Sub Division office to avail the TOU/TOD tariff benefit. But it is kindly submitted here that as per the office record the complainant was not submitted any such request to the Sub Division office to avail the TOUTOD tariff benefit facility*

3. ***Issue:*** *Interest on ACD was not adjusted to the complainant in the first billing cycle as per HERC instruction.*

4. **Reply there of:** *In this issue it is kindly submitted that the interest on ACD is being credited in electricity accounts through R-APDRP/online billing system, but not by this office.”*
17. That the complainant apprised Ld. CGRF during the hearing that refusing the benefit of TOU/TOD by the SDO vide his letter memo No. 1608 dated 28.04.2023 was only an afterthought because in the reply dated 10.01.2023, the SDO had not only agreed to make the refund but also had given the calculations of the refundable amount, as also explained in para “12” above.
18. That the Ld. CGRF, by ignoring all the documents and replies on record and without any analytical and judicious arguments in the matter, passed the impugned order dated 04.08.2023. This order reads as under:
“The Forum observed that SDO (OP) Kalanwali Sirsa neither submitted his reply to the Forum nor attended phone calls since 12.05.2023 till 26.07.2023. The SE (OP) Circle, DHBVN, Sirsa was informed regarding non attending the case by SDO (OP) Kalanwali, then SE/OP Sirsa directed another SDO/OP (on dated 01.06.2023) to attend the Forum. SDO/OP Kalanwali submitted his reply to the Forum on 26.07.2023 at Circle office Sirsa. Delay on the part of SDO to submit the reply is taken very seriously by the Forum. SE (OP) Circle, DHBVN, Sirsa is directed to call explanation of SDO regarding non cooperative behavior of the SDO for not filing the reply well in time and for not attending the Forum even on VC nor deputed any representative on behalf of the S/ divn within three months from the date of Order. Thus, SE OP Circle DHBVN Sirsa is directed to call the explanation of SDO for his non-cooperative behaviour and take necessary action accordingly please. And Forum decided to disposed off the case with the direction to the SDO to refund the MC Tax and interest on ACD to the complainant as per instructions of the Nigam and as per record. The case is closed. No cost to both the parties.”
19. That a perusal of the above order would reveal that the Ld. CGRF seemed to be more interested in taking the SDO to task rather than resolving the grievances involved in the matter. Also, that the order of Ld. CGRF does not mention even a word regarding TOU/TOD benefit which was a major grievance of the complainant.
20. That the reply of SDO dated 26.07.2023, which was also the same as submitted before the hon’ble Ombudsman on dated 28.04.2023, is absolutely contrary to his own reply dated 10.01.2023.

21. That the Ld. CGRF should have questioned the legality of the 2nd reply of the SDO, which was totally in contravention to his 1st reply in January 2023, especially in light of the fact that the matter had been remanded back to Ld. CGRF only on the grounds that the amount in question was more than Rs. 13 lacs.
22. That para "C" of the order of hon'ble Electricity Ombudsman dated 01.05.2023 is reproduced as under:

"Hearing was held on 01.05.2023, as scheduled. Both the parties were present during the hearing through video conferencing. At the outset, the appellant submitted that the CGRF heard the case on dated 13.10.2022, 13.12.2022, 12.01.2023 and 14.02.2023 but only the proceedings of 14.02.2023 is mentioned in the order reason best known to the CGRF. Mr. Gupta exhibited the copies of cause list in support of his averment. Further, he submitted that as per respondent SDO office Memo no. 64 dated 10.01.2023 submitted before the CGRF, the amount of dispute was Rs. 1353025/-. The respondent SDO also submitted that, since the claim of the appellant was more than 3 lakhs, the appeal lies before the corporate forum".
23. That section 115 of the Indian Evidence Act, 1872 lays down the principle of estoppel as a rule of evidence. It provides that "when one person has, by his declaration, act or omission, intentionally caused or permitted another person to believe a thing to be true and to act upon it, then in no case can he or his representative deny the truth of that thing later in the suit or in the proceedings. In simple words, estoppel means one cannot contradict, deny or declare to be false the previous statement made by him in the Court.
24. An estoppel is a principle, whereby a party is precluded from denying the existence of some state of facts which has formerly admitted. The foundation of the doctrine is that a person cannot approbate and reprobate at the same time; Purshottam v. Bhagwat Sharan, MANU/MP/0524/2002 : AIR 2003 MP 128. Under Indian Evidence Act, sections 115 to 117 based on the principle what is called "doctrine of estoppel".
25. That the reply of SDO dated 26.07.2023 is only an afterthought and an attempt to misguide the judicial body and to place wrong facts before the Ld. CGRF as well as the hon'ble Ombudsman and is a violation of the provisions of Indian Evidence Act of 1872 and the "Doctrine of Estoppel".

26. That the reply of the SDO dated 10.01.2023 filed before the Ld. CGRF is an evidence on record and any further evidence in contravention to the previous evidence is not only bad in the eyes of law but also of no relevance.
27. That the calculation of TOU/TOD benefit as given by the SDO in his reply dated 10.01.2023 was based on 2 nos. sales circulars 29/2017 and 32/2018 by which the TOU/TOD benefits had been allowed for the Industrial and Commercial consumers. The benefit under these two circulars was to be given from October 2017 to March 2018 (FY 2017-18) and from October 2018 to March 2019 (FY 2018-19) respectively.
28. That these sales circulars clearly described the procedure through which a consumer could avail the benefits of refund. The procedure was as under:
- “The eligible consumers opting for TOU tariff shall submit their applications for exercising their option to the concerned SDO (OP) who shall allow the same and inform the concerned consumer within three days of the date of application. A copy each of the intimation to the consumer shall be sent to Billing Agency, SE/RAPDRP, SE/IT and the XEN/SE Operation. It shall be the responsibility of the XEN (OP) to ensure that the consumers who have opted for TOU tariff are billed by the Billing Agency as per TOU tariff”.*
29. That the SDO in his reply filed before the Ld. CGRF and hon'ble Ombudsman (same reply) stated wrongly that the complainant had not applied for the TOU/TOD tariff. The bills issued by the billing agency prove contrary to what the SDO has said.
30. That the bills for consumption during the months of October 2018 to March 2019 reveal that TOU/TOD tariff benefit has been given in the months from December 2018 to March 2019 but it has not been given for the months of October 2018 and November 2018. Since these bills have been issued by the billing agency, it proves that the complainant had submitted his request and that the SDO had duly forwarded it for TOU tariff to the higher authorities including the Billing agency otherwise these benefits would not have been effected through the billing engine.
31. That similar thing had happened in the FY 2017-18 wherein the TOU/TOD benefit was to be given from October 2017 to March 2018.
32. That realizing these mistakes on their part, the subdivision manually calculated the benefits for the months of October 2017 to March 2018 and

for the remaining months of October 2018 and November 2018 and duly submitted these details, month wise, before the Ld. CGRF in the reply dated 10.01.2023.

33. That the refund of M Tax, which has been admitted by the SDO in his replies dated 10.01.2023 and 26.07.2023 before the Ld. CRGF as well as before the hon'ble Ombudsman, has also not been credited to the complainant's account till date.
34. That in light of the facts explained above, the present petition has been filed to get the grievances redressed because these have been dismissed by the Ld. CGRF without any reason and without even looking into the matter analytically.

Prayer

In view of the foregoing, it is most humbly prayed that:

1. The present petition may kindly be allowed and impugned order dated 04.08.2023 passed by the Ld. CGRF Gurugram may be set aside, the complaint be accepted and the respondents be directed to give the following credits into the complainant's account:
 - i) The Municipal Tax of Rs. 544767/- as per the details provided by the SDO in his reply dated 10.01.2023 along with due interest
 - ii) The TOU/TOD benefit of Rs. 684985/- as per details provided by the SDO in his reply dated 10.01.2023 along with due interest
2. Any other relief to the petitioner which the hon'ble Electricity Ombudsman deems fit in light of the highhandedness on the part of the respondents

Counsel for the appellant also file application for condonation of delay of 64 days in filing the appeal against the order dated 04.08.2023 passed by Ld. CGRF DHBVN Gurugram in the present case (4374-R of 2023) under section 5 of the limitation act, 1963 read with section 151 of CPC 1908.

Most Respectfully Showeth: -

- a. That there has been a delay of 64 Days in filing the present appeal. Appellant petitioner requested Ld. CGRF DHBVN on 06.08.2023 to provide the certified copy of order and reply submitted by the respondent but the same has not been provided so far.

- b. Appellant petitioner Mr. Bhola Ram in present case is a person suffering from back pain and is often not able to travel much around and has been advised to restrict his travel. The certified copy of order passed by CGRF has not been given to him so far and it has not been possible for him to collect the certified copy in person from Gurugram. So he could not file the appeal in stipulated time i.e. 04th September 2023 (certified copy not yet received).
- c. Section 5 of Limitation Act-1963 reads 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.
- d. That the Hon’ble Apex Court through its judgment in Collector, Land Acquisition, Anantnag Vs Katiji, (AIR 1987 SC 1353) has observed “Refusing to condone delay can result in a meritorious matter being thrown out at the very threshold and cause of justice is being defeated. As against this when delay is condoned the highest that can happen that a cause would be decided on merits after hearing the parties.” Further, it held that it must be grasped that judiciary is respected not on account of its power to legalize injustice on technical ground but because it is capable of removing injustice and is expected to do so.
- e. 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.
- f. 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

Prayer: -

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

- i. Condone delay of 64 Days in filling the present appeal.

B. The appeal was registered on 18.10.2023 as an appeal No. 92/2023 and accordingly, notice of motion to the Appellant and the Respondents was issued for hearing the matter on 15.11.2023.

C. The counsel for the appellant vide email dated 10.11.2023 has submitted written arguments, which is as under: -

1. That para nos. 8, 9, 10 & 11 of the petition may kindly be referred to wherein the reply of the SDO dated 10.01.2023 has been mentioned.
2. That para nos. 10 & 11 of the petition are hereby reproduced as under for ready reference:

Para no. 10

That as per this exhaustive reply of the SDO Kalanwali, following amounts due for refund were intimated to the Ld. CGRF:

i)	M/S Bansal Cotton Oil & General Mills		
	ED (Interest on ACD)	=	123273/-
	M Tax	=	544767/-
	TOU/TOD rebate	=	684985/-
	Total	=	<u>13,53,025/-</u>
ii)	M/S Suresh Cotton Mill		
	ED	=	239850/-
	TOU/TOD	=	801550/-
	Total	=	<u>1041400/-</u>
iii)	M/S Swaran Oil Mill		
	ED	=	<u>489425/-</u>
iv)	M/S Shivam Cotton Factory		
v)	ED	=	<u>85178/-</u>
vi)	M/S Jagdambey Trading Company		
vii)	ED	=	<u>60887/-</u>

Para No. 11

That on the basis of the above referred reply of the SDO, Ld. CGRF accepted the details and ordered refunds in 4 nos. cases except in the case of present complainant M/S Bansal Cotton Oil & General Mills (case no. 4374)

3. That the Ld. CGRF passed orders in 4 nos. cases out of 5 nos. on the basis of SDO's same reply dated 10.01.2023 is detailed below:

i)	M/S Suresh Cotton Mill (Case no. 4315/2022)		
	ED	=	239850/-
	TOU/TOD	=	801550/-

Total = 1041400/-

(Order passed on 27.02.2023 by Ld. CGRF in case no. 4315/2022.
Concluding part reproduced as under:

“Proceedings were held on 14.02.2023 through VC. The SDO as well as complainant were present. The S/Divn submitted reply vide his office memo no. 64 dated 10.01.2023 intimating that complete record has been got checked and found that no tariff concession of the peak load hours have been given to the complainant. Now as per record calculation has been made regarding concession to be given and send to the higher office for auditing the calculation. The subdivision argued that account of the consumer will be overhauled and correct bill will be submitted in next billing cycle to the complainant.

The Forum decided to dispose of the case with direction to SDO to overhaul the account of the complainant as per instructions of the DHBVN and supply the correct bill to the consumer in the next billing cycle. The case is closed.”

- ii) M/S Swaran Oil Mill (Case no. 4301/2022)
ED = 489425/-
- iii) M/S Shivam Cotton Factory (Case no. 4302/2022)
ED = 85178/-
- iv) M/S Jagdambey Trading Company (Case no. 4300/2022)
ED = 60887/-

4. That similar orders were passed on the same date 27.02.2023 on the basis of the same reply of the SDO dated 10.01.2023 and the bills of these consumers have since been corrected.

D. The counsel for the respondent SDO vide email dated 14.11.2023 has submitted reply which is as under: -

1. That Sh. Bhola Ram of M/s Bansal Cotton Oil Mills, Kalanwali, Sirsa is a consumer of DHBVN under HT category bearing account no. KIHT- 0004 under SDO OP Sub Division, Kalanwali, Sirsa filed a complaint for redressal of his grievances before the Forum for redressal of consumer grievances DHBVN, Gurugram for mainly including three issues i.e. (i) Interest on ACD as per the instructions of Nigam. (ii) The rebate of TOU/TOD from 2017 to 2019. (iii) Exemption of MC Tax as unit situated outside Municipal limit and refund of MC tax charged so far. But after proceedings and after hearing arguments in length of both the parties, the Forum observed and ordered on dated 27-02-2023, that as per regulations of HERC (1st amendment) regulation, 2022 dated 06-04-2022 which read

as 2.8.1- "The Corporate Forum shall have the Jurisdiction to dispose off all the monetary disputes of an amount exceeding Rs. 3 lakhs in each case. Provided that the complaint/ representation is made within two years from the date of cause of action". The Forum decided to dispose the case with the direction to the complainant to file his case before the Chairman Zonal CGRF, DHBVN, Hisar, as the case lies under his jurisdiction.

2. That in appeal no. 34 of 2023 which is against the order dated 27-02-2023, passed by CGRF DHBVN, Gurugram in complaint no. 4374 of 2022, Ld. Electricity Ombudsman ordered after hearing both the parties and facts brought on record that the corporate Forum has erred in deciding the instant complaint as same has been decided without considering the facts of the case and wrongly directed the complainant to file his case before the Chairman Zonal CGRF, DHBVN, Hisar. Therefore, the matter is remanded back to the Corporate Forum for relook and deciding the prayer of complainant on merits by applying relevant instructions of HERC regulations.
3. That the complaint was again registered at Corporate CGRF of DHBVN, vide case no. DH/CGRF/4374-R/2023 on dated 12-05-2023 and listed for hearings on 01-06-2023, 09-06-2023, 26-06-2023 and 26-07-2023. The Petitioner/Complainant has raised the three issues again which are mentioned below: -
 1. Interest on ACD as per the instructions of the Nigam.
 2. The rebate of TOU/TOD in complete from 2017 to 2019.
 3. Exemption of MC Tax as unit situated outside Municipal limits and refund of MC tax charged so far.

That hearing were held on 01-06-2023, 09-06-2023, 26-06-2023 and 26-07-2023. The last proceedings were held on 26-07-2023 at Sirsa circle office. The SDO submitted his reply vide office memo no. 3393 dated 26-07-2023 which was also given to the complainant. SDO through his reply submitted and stated that: -

Issue No. 1: - Unit of complainant is situated outside the Municipal limit and as per regulations, MC tax is not chargeable in the electricity bill of the complainant, but MC tax is levied on the electricity consumption of his unit from the date of connection.

Reply of SDO of issue no. 1: - In this issue it is kindly submitted that the unit of the complainant is situated out the Municipal limit and the MC tax is not chargeable to the electricity consumption in monthly bills. And this office will adjust the already levied MC tax in the complainants electricity account in the upcoming monthly bills as per Nigam's commercial instructions.

Issue No. 2: - TOU/TOD tariff benefit for the year 2017 to 2019 was not given to the complainant in complete.

Reply of SDO of issue no. 2: - In this issue it is kindly submitted that as per Nigam's guidelines the complainant was to be submitted a representation to the sub Division office to avail the TOU/TOD tariff benefit. But it is kindly submitted here that as per the office record the complainant has not submitted any such request to the sub Division office to avail the TOU/TOD tariff benefit facility.

Issue No. 3: - Interest on ACD was not adjusted to the complainant in the first billing cycle as per HERC instructions.

Reply of SDO of issue no. 3: - In this issue it is kindly submitted that interest on ACD is being credited in electricity accounts through R-APDRP/ online billing system, but not by this office.

4. That the forum decided to dispose off the case with the direction to the SDO to refund the MC tax and interest on ACD to the complainant as per instructions of the Nigam and as per record.

It is submitted here that case decided in CGRF order dated 04-08-2023, Forum directed to SDO Kalanwali to refund the MC tax and interest on ACD as per instructions of Nigam as per record. It is submitted as per order of CGRF, sub division Kalanwali agrees to provide MC tax refund and interest on ACD. MC tax sundry will be prepared and interest on ACD will be refunded in next month.

It is further submitted that as per appeal, appellant/petitioner wants TOD/ TOU benefit for the period of 2017- 2018 and 2018-2019 respectively. As per sales circular 29/ 2017 and 32/2018 consumer required to submit a representation to the sub division. But this consumer has not submitted any representation of that period.

That in para no. 29, 30, 31 and 32 the appellant has given the averments that the complainant has submitted his request for giving benefit of TOD/TOU tariff because in few bills they have been given TOU/TOD tariff benefit. So it is submitted that when the appellant has given the representation he has availed the TOU/TOD tariff benefits.

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 15.11.2023, as scheduled. Both the parties were present during the hearing through video conferencing. At the outset, the counsel for the respondent submitted that MC Tax benefit has already been calculated and shall be refunded in the next bill and no TOU/TOD benefit is given as the appellant has not submitted any documentary evidence that he opted the scheme. Counsels of the appellants contented that TOU/TOD benefit was calculated by the respondents and detail was submitted before the CGRF but the same was not given. They are not disputing the calculation made by the respondents and only praying to refund the benefit calculated. Per contra, Counsel for the respondents submitted that they are ready to give TOU/TOD benefit if diary no. vide which application regarding opting the TOU/TOD scheme is submitted by the appellant, is provided by him. After hearing both the parties, the appellant is directed to provide to the respondent SDO within week proof of opting the TOU/TOD scheme, if any and thereafter the respondents are directed to take necessary action as per rules and regulation and to submit report on next date of hearing. The matter was adjourned for 05.12.2023.

F. The counsel for the appellant vide email dated 16.11.2023 has submitted application for amendment of pleading / prayer in the present case under order VI rule 17 of CPC, 1908, which is reproduced as under:

1. That as per the petition filed in forum of Hon'ble CGRF DHBVN Gurgaon, there were three grievances in the petition, which are mentioned as below.

Cause of action arose in the favor of complainant and against the respondent when the respondents failed to give:

- (i) Interest and penal interest on ACD as per law.
- (ii) Refund Mc Tax in bill.
- (iii) Allow TOU/TOD tariff in full.

These were admitted by the Hon'ble CGRF and respondent submitted the reply accordingly.

Respondent also add on this point and submit the calculation yesterday during the proceedings of matter at Hon'ble EO.

But due to typo error the prayer of ACD was missed to add in the appeal filed in the court of Hon'ble Ombudsman (HERC).

Petition filed in CGRF was also shared with the appeal filed and not attaching here for the sake of brevity.

You are requested to add the grievance of ACD in the prayer in the interest of Justice.

G. The counsel for the respondent SDO vide email dated 01.12.2023 has submitted fresh reply, which is as under: -

1. That Sh. Bhola Ram of M/s Bansal Cotton Oil Mills, Kalanwali, Sirsa is a consumer of DHBVN under HT category bearing account no. KIHT- 0004 under SDO OP Sub Division, Kalanwali, Sirsa filed a complaint for redressal of his grievances before the Forum for redressal of consumer grievances DHBVN, Gurugram for mainly including three issues i.e. (i) Interest on ACD as per the instructions of Nigam. (ii) The rebate of TOU/TOD from 2017 to 2019. (iii) Exemption of MC Tax as unit situated outside Municipal limit and refund of MC tax charged so far. But after proceedings and after hearing arguments in length of both the parties, the Forum observed and ordered on dated 27-02-2023, that as per regulations of HERC (1st amendment) regulation, 2022 dated 06-04-2022 which read as 2.8.1- "The Corporate Forum shall have the Jurisdiction to dispose off all the monetary disputes of an amount exceeding Rs. 3 lakhs in each case. Provided that the complaint/ representation is made within two years from the date of cause of action". The Forum decided to dispose the case with the direction to the complainant to file his case before the Chairman Zonal CGRF, DHBVN, Hisar, as the case lies under his jurisdiction.
2. That in appeal no. 34 of 2023 which is against the order dated 27-02-2023, passed by CGRF DHBVN, Gurugram in complaint no. 4374 of 2022, Ld. Electricity Ombudsman ordered after hearing both the parties and facts brought on record that the corporate Forum has erred in deciding the instant complaint as same has been decided without considering the facts of the case and wrongly directed the complainant to file his case

before the Chairman Zonal CGRF, DHBVN, Hisar. Therefore, the matter is remanded back to the Corporate Forum for relook and deciding the prayer of complainant on merits by applying relevant instructions of HERC regulations.

3. That the complaint was again registered at Corporate CGRF of DHBVN, vide case no. DH/CGRF/4374-R/2023 on dated 12-05-2023 and listed for hearings on 01-06-2023, 09-06-2023, 26-06-2023 and 26-07-2023. The Petitioner/Complainant has raised the three issues again which are mentioned below: -

1. Interest on ACD as per the instructions of the Nigam.
2. The rebate of TOU/TOD in complete from 2017 to 2019.
3. Exemption of MC Tax as unit situated outside Municipal limits and refund of MC tax charged so far.

That hearing were held on 01-06-2023, 09-06-2023, 26-06-2023 and 26-07-2023. The last proceedings were held on 26-07-2023 at Sirsa circle office. The SDO submitted his reply vide office memo no. 3393 dated 26-07-2023 which was also given to the complainant. SDO through his reply submitted and stated that: -

Issue No. 1: - Unit of complainant is situated outside the Municipal limit and as per regulations, MC tax is not chargeable in the electricity bill of the complainant, but MC tax is levied on the electricity consumption of his unit from the date of connection.

Reply of SDO of issue no. 1: - In this issue it is kindly submitted that the unit of the complainant is situated out the Municipal limit and the MC tax is not chargeable to the electricity consumption in monthly bills. And this office will adjust the already levied MC tax in the complainant's electricity account in the upcoming monthly bills as per Nigam's commercial instructions.

Issue No. 2: - TOU/TOD tariff benefit for the year 2017 to 2019 was not given to the complainant in complete.

Reply of SDO of issue no. 2: - In this issue it is kindly submitted that as per Nigam's guidelines the complainant was to be submitted a representation to the sub Division office to avail the TOU/TOD tariff benefit. But it is kindly submitted here that as per the office record the complainant has not submitted any such request to the sub Division office to avail the TOU/TOD tariff benefit facility.

Issue No. 3: - Interest on ACD was not adjusted to the complainant in the first billing cycle as per HERC instructions.

Reply of SDO of issue no. 3: - In this issue it is kindly submitted that interest on ACD is being credited in electricity accounts through R-APDRP/ online billing system, but not by this office.

4. That the forum decided to dispose off the case with the direction to the SDO to refund the MC tax and interest on ACD to the complainant as per instructions of the Nigam and as per record.

It is submitted here that case decided in CGRF order dated 04-08-2023, Forum directed to SDO Kalanwali to refund the MC tax and interest on ACD as per instructions of Nigam as per record. It is submitted as per order of CGRF, sub division Kalanwali agrees to provide MC tax refund and interest on ACD. MC tax sundry will be prepared and interest on ACD will be refunded in next month.

It is further submitted that as per appeal, appellant/petitioner wants TOD/ TOU benefit for the period of 2017- 2018 and 2018-2019 respectively. As per sales circular 29/ 2017 and 32/2018 consumer required to submit a representation to the sub division. But this consumer has not submitted any representation of that period.

That in para no. 29, 30, 31 and 32 the appellant has given the averments that the complainant has submitted his request for giving benefit of TOD/ TOU tariff because in few bills they have been given TOU/TOD tariff benefit. So, it is submitted that when the appellant has given the representation he has availed the TOU/TOD tariff benefits.

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.

H. The counsel for the respondent SDO vide email dated 03.12.2023 has submitted fresh reply, which is as under: -

1. That on 15.11.2023 Ld. Electricity Ombudsman passed the order that after hearing both the parties, the appellant is directed to provide, to respondent SDO, within a week, proof of opting of the TOU/TOD scheme, if any, and thereafter the respondents are directed to take necessary action as per rules and regulations and to submit report on next date of hearing.

2. That in compliance of the order of Ld. Ombudsman the counsel for the Appellant/Petitioner vide letter dated 01.12.2023 has submitted that they are enclosing the copies of their request/application to respondent office for grant of TOU/TOD tariff benefit. And these applications were duly acknowledged and received by the office/officials of the respondent department.
 3. That it is pertinent to mention that as per interim order 15.11.2023, the Appellant has provided the application with Diary No. on dated 01.12.2023. So as per application, sub division take the process to give the TOU/TOD benefits. The respondent department will give the benefits through sundry as per Nigam instructions.
 4. That it is submitted here that a case decided in the CGRF, case no. DH/CGRF/4374-R/GGN/2023 ordered on dated 04-08-2023. The Ld. Forum directed to SDO Kalanwali to refund the MTAX and interest on ACD as per instruction of Nigam and as per record. As per order of CGRF, sub division Kalanwali agrees to provide MTAX refund and interest on ACD. Both sundry are prepared and MTAX sundry No. is 199/84/175 and case ID No. is 4114954479 sent to CBO, and CBO remarked to take the approval from Xen. For implementation of CGRF orders. Interest on ACD sundry No. is 209/91/175.
- I.** Shri Sanjeev Kumar Chopra authorized representative vide email dated 05.12.2023 submitted written arguments against reply submitted by the respondent SDO on 03.12.2023, which is reproduced as under:
1. That the interim order dated 15.11.2023 by the hon'ble Ombudsman said as under:
"After hearing both the parties, the appellant is directed to provide to the respondent SDO within week proof of opting the TOU/TOD scheme, if any and thereafter the respondents are directed to take necessary action as per rules and regulation and to submit report on next date of hearing.
 2. That in compliance to the direction of Hon'ble Ombudsman the petitioner submitted the copies of such applications duly acknowledged by the respondent / official of respondent vide reply dated 01.12.2023 with a copy to the respondents.
 3. That the respondents in their reply dated 03.12.2023 have admitted receipts of these applications and have agreed to release the benefits vide sundry items. The relevant portion at Sr. no. 3 of their reply is reproduced as under for ready reference:

“So as per application, subdivision take the process to give the TOU/TOD benefits. The respondent department will give the benefits through sundry as per Nigam instructions”

4. That regarding M Tax and interest on ACD, the respondents at Sr. no. 4 of their reply have submitted as under:

“Subdivision Kalanwali agrees to provide M Tax refund and interest on ACD. Both sundry are prepared and M Tax sundry No. is 199/84/175 and the case ID no. is 4114954479 sent to CBO, and the CBO remarked to take the approval from XEN. For implementation of CGRF order on interest on ACD, sundry no. is 209/91/175”

5. That it is very serious to note that the subdivision in their previous reply before CGRF as well as before the hon'ble Ombudsman wrongly submitted that the petitioner was not eligible for TOU / TOD benefits because no such applications had been submitted. But, now in their reply dated 03.12.2023, they have admitted the receipt of such applications. Had the copies of these receipts not been available with the petitioner or had these receipts got misplaced inadvertently, the respondents would not have agreed to give the benefit at all.
6. It is pertinent to mention here that the respondents during the proceedings at CGRF had admitted that the appellant was eligible for TOU/TOD rebate and had also submitted the detailed calculation of refundable amount after adjusting the refund already adjusted in 4 monthly bills (i.e. from Jan-2019 to April-2019).
7. That the calculation of TOU / TOD benefits had been calculated and submitted by the subdivision in its reply dated 10.01.2023, which is a matter of record. The petitioner never disputed this calculation and simply wanted their dues to be paid respectfully.
8. That regarding refund of M Tax as well as interest on ACD, it is now more than 8 months since the hearing before hon'ble Ombudsman in May 2023 and more than 4 months since the CGRF Gurugram ordered the respondents to pay the same to the petitioner in the next bill. Giving sundry item nos. in their latest reply dated 03.12.2023 does not serve any purpose. The reply does not mention any calculation, neither of the M Tax refund nor that of the interest on ACD. CBO rejecting or back referring the sundry for XEN's approval even after the clear order by the CGRF does not make any sense.
9. That due to non-serious approach on the part of subdivision and wrong submissions of facts before the Ld. CGRF and hon'ble Ombudsman, the

petitioner has been deprived of his legitimate benefits and dues which he could have got almost 4 years back.

10. That the appellant petitioner has placed reliance upon the order passed by Hon'ble HERC in appeal/ petition number 06-2023 titled as M/S Ram Oil Mill, CIA MOD, Complainant/Petitioner Versus. DHBVN & Anr as Respondents wherein the Hon'ble Commission ordered as under

"The Commission observed that non-payment of interest to the consumer, since it was not specified in CGRF order is not justified, as the DHBVN vide sale circular D-32 of 2019 dated 18.09.2019 issued on TOU/TOD tariff in pursuance of tariff order dated 07.03.2019 issued by the Commission interalia specifies- "There should not be any arrear in respect of such rebate, pending for settlement. In case of arrears of such rebate, the responsibility of concerned officer/official shall be fixed and the consumer shall be given the rebate along with interest @ 9% per annum."

11. That the appellant also places reliance upon the order passed in Appeal number 71/2023 of Electricity Ombudsman, titled as Shri Suresh Goyal, M/s Suresh Cotton Oil & General Mills, Kalanwali, Dabwali Sirsa (Complainant) Versus DHBVN as Respondent wherein the respondent SDO in his own submission before Hon'ble Ombudsman submitted "The respondent SDO assured that above principal amount of TOU/TOD benefit for FY 2017-18 and FY 2018-19 along with 9% per annum interest on TOU/TOD rebate as per provision of Nigam's Circular, PF rebate and ACD interest for pending financial year along with interest of 18% per annum for the period for 12 which the payment of ACD interest accrued is delayed, shall be provided in next billing cycle."

As per submission of the respondent SDO, Hon'ble Ombudsman ordered as under

"In view of the above, the respondent SDO is directed to adjust/refund above mentioned payments to the appellant, as agreed upon, in next billing cycle. Further, the contention of the appellant for the rebate of ToU/ToD for period 2019-20, 2020-21 is not admissible as Smart Meter was the pre-requisite for availing ToD tariff and the same was not installed by the appellant. The appeal is hereby disposed off accordingly. Both the parties to bear their own costs. File may be consigned to record. Given under my hand on 13th October, 2023."

12. That the petitioner rightly deserves payment of penal interest as per HERC instructions on the amounts which had become due actually 4 years back, which he could not get just because the subdivision did not take action in time, intentionally or unintentionally.

13. That the respondents may be directed to release TOU/TOD benefits along with an interest of 9% per annum, as per HERC instructions in a time bound manner, as deemed fit by the hon'ble Ombudsman. The calculation of TOU/TOD benefit has already been calculated and submitted by the subdivision in their reply dated 10.01.2023 before Ld. CGRF.
14. That the respondents may be directed to place on record the amounts of M Tax refund and interest on ACD along with penal interests on both these dues and to pay to the petitioner in a time bound manner, as deemed fit by the hon'ble Ombudsman.
15. Application for amendment of pleading / prayer under O-6, Rule-17 of CPC 1908 was submitted on 16-11-2023 with a submission to add the issue of Interest on ACD with penal interest. This point was inadvertently missed in the prayer before Hon'ble Ombudsman while the issue was well in the original petition to CGRF and the respondent had also submitted refund calculation of Interest on ACD.
16. As per Section 62(6) of Electricity Act 2003 (as amended upto date) the appellant is entitled for the payment of interest on the amount illegally/ arbitrarily withheld

Prayer

It is most humbly prayed that:

1. The issue of payment of Interest on ACD to the petitioner may kindly be allowed to be added in the original application / petition and in the prayer
 2. The respondents be directed to submit details of M Tax refund along with penal interest and to pay the same to petitioner at the earliest in a time bound manner, as deemed fit by the hon'ble Ombudsman
 3. The respondents be directed to submit details of interest on ACD along with penal interest and to pay the same to petitioner at the earliest in a time bound manner, as deemed fit by the Hon'ble Ombudsman.
 4. The respondents be directed to release TOU/TOD benefits, as calculated in their reply dated 10.01.2023 before the Ld. CGRF along with 9% interest as per HERC instructions
 5. Any other direction to the respondents, which the Hon'ble Ombudsman may deem fit, in light of denial of these benefits to the petitioner for more than 4 years now.
- J.** Hearing was held on 05.12.2023, as scheduled. Both the parties were present during the hearing through video conferencing. At the outset, counsel for the

respondent submitted that in compliance of the order of CGRF regarding M Tax refund and interest on ACD, for M Tax sundry No. is 199/84/175 was prepared and case ID No. 4114954479 was generated but CBO remarked to take the approval from XEN, for which needful is being done and for adjustment of Interest on ACD, sundry No. 209/91/175 has been prepared and will be uploaded shortly. Mr. Bansal further, submitted that the copies of request/application for grant of TOU/TOD tariff benefit submitted by the appellant after interim order dated 15.11.2023, have been received by the office/officials of the respondent department and the respondent department will give the benefit through sundry as per Nigam instructions. Shri Sanjeev Chopra, authorized representative of the appellant submitted that the refund be provided with interest in the next billing cycle. The respondent SDO agreed to adjust/refund above discussed benefits in consumer account in next to next billing cycle.

K. In view of the foregoing discussions and facts, the respondent SDO is directed to ensure adjustment/refund of MC Tax, ACD interest along with the interest at the rate of 18% per year for the period for which the payment of interest accrued is delayed (as specified in DHBVN Sales Instruction no. -9/2016) and TOU/TOD rebate for FY 2017-18 and FY 2018-19 as per Nigam instructions along with interest @ 9% per annum (as specified DHBVN Sales Circular No. D-32/2019) in the next to next billing cycle. 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 6th December, 2023.

Sd/-

(Virendra Singh)

Electricity Ombudsman, Haryana

Dated: 6th December, 2023

CC-

Memo. No. HERC/EO/Appeal No. 92/2023/ 3801-3807

Dated: 07.12.2023

1. Shri Bhola Ram, M/s Bansal Cotton oil & General Mills, Kalanwali, Sirsa (Email gupta.aks786@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, Delhi Zone, Delhi (Email ceopdelhi@dhbvn.org.in).
5. The Superintending Engineer/OP, Sirsa (Email seopsirsa@dhbvn.org.in).
6. The Executive Engineer Operation Division, DHBVN Dabwali, Sirsa (Email xenopdabwali@dhbvn.org.in).
7. The SDO Operation, Sub Division, DHBVN Kalanwali, Sirsa (Email sdoopkalanwali@dhbvn.org.in).