



BEFORE THE ELECTRICITY OMBUDSMAN, HARYANA

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(Regd. Post)

Appeal No. : 30/2024
Registered on : 19.09.2024
Date of Order : 13.02.2025

In the matter of:

Appeal against the order passed by CGRF DHBVN Gurugram on 20.06.2024 in Case No DH/ CGRF 4713/2024.

Sh. Mahabir Prasad, C/o Mahadev Wire Product, Narnaul
Versus

Appellant

1. The Executive Engineer Operation, DHBVN, Narnaul
2. The SDO (Operation), City Sub Division, DHBVN, Narnaul

Respondent

Before:

Shri Rakesh Kumar Khanna, Electricity Ombudsman

Present on behalf of Appellant:

Shri Akshay Gupta, Advocate

Present on behalf of Respondents:

Shri Mohd. Azruddeen, SDO (Operation), City S/Division, DHBVN, Narnaul

ORDER

- A.** Shri Mahabir Prasad, C/o Mahadev Wire Product, Narnaul has filed an appeal against the order dated 20.06.2024 passed by CGRF, DHBVNL, Gurugram in complaint No. DH/ CGRF 4713/2024. The appellant has requested the following relief: -

That the present appeal is filed under Section 42 (6) of the Electricity Act, 2003 read with Regulation 3.16 of Haryana Electricity Regulatory Commission (Forum and Ombudsman) Regulations, 2020 by the Appellant against the order dated 20.06.2024 passed by the Ld. CGRF, DHBVN in Case No. 4713/2024, wherein without going through the case records and appreciating the merits of the case, the Ld. CGRF disposed of the case and passed an unreasoned order.

Brief facts:

1. That Mr. Mahavir Prasad (herein after may be referred as appellant petitioner) is a law-abiding citizen and Partner of Mahadev Wire Products, Narnaul a consumer of Dakshin Haryana Bijli Vitran Nigam, Narnaul bearing account no. 0173888977 under the jurisdiction of SDO (OP) S/Divn, DHBVN, Narnaul.
2. That the connection of the complainant petitioner falls in D block (as per the category of block defined by the industry department).

3. That as per the promotion policy 2020 and gazette notification issued by the Government of Haryana

Below are the major points of the policy.

- a) All existing and new enterprises situated in 'C' and 'D' category blocks of the State having connected load of 40 kW in 'D' category blocks and 30 kW in 'C' category blocks or less will get the benefit of Power Tariff Subsidy.
 - b) That the scheme will be applicable with effect from January 1, 2021 and would be in operation till it is superseded by the government.
 - c) That enterprises will not be required to apply for availing the benefit. The Power Companies/Utilities i.e. Uttar Haryana Bijli Vitran Nigam and Dakshin Haryana Bijli Vitran Nigam (UHBVN / DHBVN) will provide this benefit by deducting the subsidy amount in the electricity bills. As per policy the Director / Director General, Micro, Small and Medium Enterprises will be the competent authority for sanction of funds to UHBVN / DHBVN. The amount of Power Tariff subsidy granted by UHBVN / DHBVN will be reimbursed by the Micro, Small and Medium Enterprises (MSME) Department from its allocated budget.
4. That as per the Government notification the respondent should allow the power subsidy @ 2/unit from 1-Jan-2021 but respondent failed to adjust the same.
 5. That HERC vide its Memo No. 1631-32 HERC/Tariff/SV/FSA/2021 dated 30.07.2021 gave direction to both the Distribution Licensee viz. UHBVN and DHBVN to discontinue Levy of FSA @ 37 paise per unit from the Electricity Bill of the Consumers to be issued on or after 30.07.2021. So, the direction of HERC was very much clear and evident that No FSA @37 paise /unit shall be charged through an Electricity bill if that Electricity bill has been issued on or after 30.07.2021. Nowhere HERC linked the withdrawal of levy of FSA @37 paise /unit in its direction with the billing period of Electricity bill to be issued on or after 30.07.2021. HERC direction was simple and straight forward that current recovery of FSA @37 paise /unit shall be stopped from levy through an Electricity bill being issued on or after 30.07.2021 by the Distribution Licensee viz. UHBVN and DHBVN.
 6. That the respondent violates the instructions of HERC and charged the FSA on electricity bill issued in the month of Aug/2021 and Sep-21.

7. That as per the Sales Circular D-9/2016 issued by DHBVN and as per the directive issued by the HERC under clause 5.8.1 & 5.8.2 of Regulation No 34/2016 i.e. The Haryana Electricity Regulatory Commission (Duty to supply electricity on request, Power to require security) Regulation 2016, the respondents were required to pay interest in the month of April of each year but respondents failed to make the payment of the interest in the month of April each year. If the respondents failed to pay the interest in the April of following year, they are required to make the payment of interest along with penal interest at the rate of 18% per annum. The relevant para is reiterated as below:

“5.8.1: The licensee shall pay interest to the consumer at the Bank rate as determined by the Reserve Bank of India on 1st April of each year or more as specified by the commission payable annually on the consumer security deposit. The interest accrued during the year shall be adjusted in the consumer’s bill for the first billing cycle of the ensuing financial year.

5.8.2: In case the interest accrued during the year is not adjusted in the consumer’s bill for first billing cycle of the ensuing financial year, the licensee shall be liable to pay interest at the rate of 18% for the period for which the payment of interest accrued is delayed.”

8. That the respondent never paid the interest on the ACD in the first billing cycle of financial year since connection.
9. That since the Appellant was aggrieved with the actions of the Respondents, filed a complaint with the Hon’ble CGRF, DHBVN seeking allowing power subsidy @ 2/unit from 1-Jan-2021, along with refund of FSA charged in bill issued on after 30.07.2021 and difference of fix charges charged from April-2021 to June-2021 woyhcost of mental harassment and agony.
10. That after filing the complaint the same was forwarded to the concerned SDO Op Subdivision DHBVN Narnaul.
11. That the respondent submitted his reply on 07-06-2024.
12. That the CGRF dispose off the case on 20.06.2024. The order of CGRF held as “After considering the reply of both the complainant and SDO and submissions made by them in the hearing, the Forum observed that subsidy is allowed (for load above 20 KW) @2 unit as per Haryana Govt. Gazette Extraordinary published by Authority Haryana Govt. Industries & Commerce Deptt. Dt. 29th July 2021 but no policy in this regard is made by DHBVN till

date for load beyond 20 KW and decision is pending on the part of new policy formation by DHBVN, thus power subsidy Rs. @2/unit is not payable to complainant. Further, the SDO (OP) City Narnaul is directed to adjust/refund the ACD penal interest amount of Rs. 117/- as per his office memo no. 712 dt. 07.06.2024. The Forum decided to close this matter. The case is closed No cost on either side". The CGRF disposed off the case merely just quoting the reply submitted by respondent SDO. No decision was given by CGRF.

13. CGRF failed to pass a reasoned order. Govt. of Haryana issued the gazette notification and DHBVN should pass on the subsidy as per Law of Promissory Estoppel. "The enterprises will not be required to apply for availing the benefit. The Power Companies/Utilities i.e. Uttar Haryana Bijli Vitran Nigam and Dakshin Haryana Bijli Vitran Nigam (UHBVN/DHBVN) will provide this benefit by deducting the subsidy amount in the electricity bills."

Grounds:

14. That the present appeal is filed on the following grounds:
- a) BECAUSE the Impugned Order is passed in a mechanical manner and against the principles of natural justice and settled principles of law.
- b) BECAUSE the Hon'ble CGRF failed to pass reasoned order and the Principal of Promissory Estoppel. "The enterprises will not be required to apply for availing the benefit. The Power Companies/Utilities i.e. Uttar Haryana Bijli Vitran Nigam and Dakshin Haryana Bijli Vitran Nigam (UHBVN/DHBVN) will provide this benefit by deducting the subsidy amount in the electricity bills."
- c) BECAUSE the order passed by the CGRF is not reasoned one.
15. That no similar appeal has been filed against the Impugned Order.
16. That there is a delay of 50 days in filing the appeal however, the same is not intentional or deliberate.

Prayer

In view of the facts and circumstances as stated above, it is most humbly submitted and prayed that this Hon'ble Forum be pleased to:

- a) Allow the appeal in favor of the Appellant and set aside the Impugned Order dated 20-06-2024 passed by the Ld. CGRF, DHBVN in Case No. 4713/2024.
- b) Direct the Respondents to allow/refund power tariff subsidy @ 2 /unit from 1-Jan-2021.

- c) Direct the Respondents to pay Rs.1,00,000/- towards cost of mental agony and harassment.
- d) Pass any such other order(s) as this Hon'ble Forum may deem fit in the interest of justice.

Application for condonation of Delay:

1. That the applicant has filed the above noted appeal along with this application and the contents of the same be read as part of this application also.
2. That the order was passed on 20.06.2024 but the physical order was not served upon the applicant till date.
3. That the applicant did not receive the physical copy of order from the forum till date.
4. That there was no intentional delay, but the delay is due to the reason explained above.
5. That Hon'ble Supreme court of India in the matter of Sakuru vs Tanaji reported as AIR 1985 SC 1279 held as that it was held that the provision of the Limitation ACT applied only to proceedings in courts not to appeals or applications before the bodies other than courts such as Quasi-Judicial tribunals or executive authorities, notwithstanding the fact that such bodies or authorities may be vested with certain specified powers conferred on courts under code of Civil or Criminal procedure and on the basis of this judgement and may other judgement passed by Hon'ble Supreme Court the Hon'ble Delhi Electricity Regulatory commission allowed the complaint in the matter of Vijay Kumar Vs Tata Power Distribution Ltd in petition No 34/2010 on 11.04.2013.
6. That Hon'ble Supreme Court of India in the matter of National Insurance Company Ltd Vs Hindustan Safety Glass works Ltd in civil appeal No 3883/2007, while deciding the issue of limitation in favour of consumer held as under, "18. In our opinion, in a dispute concerning a consumer, it is necessary for the courts to take a pragmatic view of the rights of the consumer principally since it is the consumer who is placed at a disadvantage vis-à-vis the supplier of services or goods. It is to overcome this disadvantage that a beneficent legislation in the form the Consumer Protection Act 1986 was enacted by parliament. The provision of limitation act cannot be strictly construed to disadvantage a consumer in case where

a supplier of goods or services itself is instrumental in causing a delay in the settlement of the consumer's claim. That being so, we have no hesitation in coming to the conclusion that the National Commission was right in rejecting the contention of National Insurance in this regard.”

7. That Supreme Court in *union of India & Ors Vs Tarsem Singh* (2008) 8 SCC 648 wherein the supreme court had examined the question of limitation and continuous cause action, to observe:

7. To summarise, normally, a belated services related claim will be rejected on ground of delay and laches (where remedy is sought by filing writ petition) or limitation (where remedy is sought by an application to the Administrative Tribunal). One of the exceptions to the said rule is cases relating to a continuing wrong. Where a service-related claim is based on a continuing wrong, relief can be granted even if there is a long delay in seeking remedy, with reference to the date on which the continuing wrong commenced, if such continuing wrong creates a continuing source of injury. But there is an exception to the exception, if the grievance is in respect of any order or administrative decision which related to or affected several others also, and if the reopening of the issue would affect the settled rights of third parties, then the claim will not be entertained. For example, if the issue relates to payment or refixation of pay or pension, relief may be granted inspite of delay as it does not affect the right of the third parties, but if the claim involved issues relating to seniority or promotion etc., affecting others, delay would render the claim stale and doctorin of laches/ limitation will be applied. In so far as consequential of laches/ limitation will be applied. Insofar as the consequential relief of recovery of arrears for a past period is concerned, the principal relating to recurring/ successive wrong will apply.

As a consequence, the High Court will restrict the consequential relief relating to arrears normally to a period of three years prior to date of filing of writ petition.

- B.** The appeal was registered on 19.09.2024 as an appeal No. 30/2024 and accordingly, notice of motion to the Appellant and the Respondents was issued for hearing the matter on 22.10.2024.
- C.** The respondent SDO vide email dated 21.10.2024 has submitted reply, which is reproduced as under:

It is respectfully submitted that Mr. Mahavir Prasad holding an electricity connection with account number 0173888977 and a load of 25 kW had earlier approached the CGRF in June, 2024.

The consumer has now approached the Honorable Forum requesting a power subsidy at a rate of Rs. 2 per unit. In this regard, we would like to submit that we have Sales Circular D-7/2019 issued by Nigam, which clearly states that power subsidies are applicable only to consumers with a load of less than 20 kW. As Mr. Mahavir Prasad's load exceeds 20 kW, we are unable to process his request for a power subsidy based on the existing instructions from Nigam.

We have sought clarification from the commercial wing of DHBVN.

Therefore, it is humbly requested that the Honorable Forum grant us the next date to allow us to submit a final reply after receiving the necessary clarification.

D. Hearing was held on 22.10.2024, as scheduled. Both the parties were present during the hearing through video conferencing. During the hearing, the counsel for the respondent requested for short adjournment being engaged yesterday. The respondent SDO is directed to submit reply within 10 days with an advance copy to the appellant. Acceding to the request of respondent, the matter was adjourned for hearing on 05.11.2024.

E. The counsel for the respondent vide email dated 04.11.2024 has submitted reply which is reproduced as under:

1. That it is appropriate to mention here that surprisingly in the application for condonation of delay the appellant/petitioner has not mentioned the number of days for which appellant is filing the application for condonation of delay, which are utmost necessary contents of the application. In para 16 of the appeal the appellant has mentioned the delay of 50 days in filing the appeal which is incorrect. The order of the CGRF was passed on 20-06-2024 and the appeal was filed on 16-09-2024 by the appellant, which means there is delay of 59 days in filing the present appeal.
2. That the condonation of delay means extending the time in certain cases if there is a valid reason for the delay. The law of land in the interest of justice has prescribed and recommended the provisions of limitation/ restrictions to allow the extension of the prescribed period

if the appellant or applicant can show a valid reason for not filing the appeal or application on time. But in the present application for condonation of delay the appellant has not mentioned any valid reason for delay of 59 days as in these days there are many sources/ options are available to the litigants to get the hard copy of any order.

On Merits: -

That the contents of reference para are matter of record to the extent that the present appeal is filed under section 42(6) of the Electricity Act, 2003 read with Regulation 3.16 of Haryana Electricity Regulatory Commission (Forum and Ombudsman) Regulations, 2020, but the rest of the contents, that the order dated 20-06-2024 has been passed by Ld. CGRF, DHBVN in case no. 4713/2024 without going through the case records and appreciating the merits of the case, are wrong and incorrect, hence it is denied.

Reply of issues of the Appellant is as under: -

1. FSA charging - As per S.C. No. D-35/2021 the charging of FSA had been decided to discontinue. In case of this consumer the bill had generated for the period of 01/08/2021 to 01/09/2021 of 440 units and corresponding FSA had added of Rs. 42/-. But FSA as per S.C. No. D-35/2021 should be upto 30/07/2021 only, and in the bills of month of October and November, Rs.62/- had been refunded in the bill of Sep. 2021. From this onward the FSA had not been charged up to March 2023 and as per S.C. No. D-14/2023 FSA has been charged in this account no. 0173888977. So, the charging of FSA in this account no. was found as per Nigam Instructions.
2. Power Subsidy - As per sales circular No. D-7/2019 (Annexure R-2) the Power subsidy scheme of Rs. 2/- per unit for all Industrial connection in 'C' & 'D' category blocks of the State with a connected load of 20 KW or less.

The main points of Sales Circular No. D-7/2019 are as under: -

The State Govt. vide Power Department Notification No. 23/24/2018-3P dated 21/12/2018 (copy attached) has decided to grant a subsidy of Rs. 2/- per unit in the applicable tariff on consumption w.e.f. 1st November, 2018

to all Industrial connections in 'C' & 'D' category blocks of the state, having connected load of 20 KW or less.

The State Commission shall grant necessary approval for grant of subsidy of Rs. 2/- per unit in the applicable tariff to all Industrial connections in 'C' & 'D' category blocks of the State, with a connected load of 20 KW or less on consumption w.e.f. 1st November, 2018. Quantum impact of the above tariff subsidy shall be paid to the UHBVNL and DHBVNL in advance in compliance of the provisions of Section 65 of the Electricity Act, 2003.

But the appellant is having load 25 KW and he is demanding for power subsidy @ 2/- per unit - but the respondent department has the S.C. No. D-7/2019 of Nigam which states that power subsidy will be given to the consumer having load less than or equal to 20KW, but in this case consumer load is more than 20KW so the respondent department could not proceed the consumer's request for power subsidy, because instruction of Nigam does not allow power subsidy for consumer having load more than 20KW. As per Haryana Govt. Gazette, Extraordinary, published by Authority, Haryana Govt. Industries & Commerce Deptt. Dated 29th July 2021, notified power tariff subsidy scheme which explains that all existing and new enterprises situated in 'C' & 'D' category blocks of the State having connecting load of 40 KW in 'D' category blocks and 30 KW in 'C' category blocks or less will get the benefit of power tariff subsidy. That it is very important to mention here that no policy in this regard has been implemented by DHBVN till date, for load beyond 20 KW and decision is pending on the part of new policy formation by DHBVN, thus power subsidy of Rs. 2/- per unit is not payable to the appellant. When the respondent department gets the communication or instructions of Nigam for giving Power Subsidy to the consumer having load greater than 20 KW, then same will be proceeded. Until now, the respondent department has the instructions only for the consumers, having load less than 20KW.

3. ACD Interest- In case of ACD Interest this office has found that the date of connection of Sh. Mahabir Parsad is 03/09/2019. And in this connection, it has been found that consumer is receiving the interest on ACD in his electricity bills of corresponding years.

The ACD interest was reflecting in the electricity bill of April month of every year, but from the financial year 2021-22 to 2023-24 it was delayed by some months, so penal interest @ 18% as per sales instruction 9/2016 has been calculated by the respondent department for delayed period of corresponding years.

FY	SI/SC No	Intt. Rate	ACD Amount	ACD Amt. Revised on date	ACD Intt. Amount	ACD Interest already refunded in M/o	Penal Interest @ 18%
FY 2020-21	SC-19/2021	4.65%	25000		1236	16/07/2021	75
FY 2021-22	SC-19/2021	4.25%	25000		1062	06/05/2022	16
FY 2022-23			12613		859	02/05/2023	13
FY 2023-24			12358		844	03/05/2024	13
						Total	117

So, the respondent department will refund Rs. 117/- in the form of penal interest to the consumer. It has been sent to CBO Hisar for necessary approval.

The energy meter of appellant of Sh. Mahabir Parsad was manufactured by L&T and on checking the billing history of this consumer it was found that his meter status is Active and the billing has been on actual reading basis and latest reading of consumer in bill of m/o 4/2024 was (83422KWh) and (97202KVAh). On checking the billing history of the consumer, it was found that the KVAh reading is always greater than KWh reading, so it may assumed that the working of energy meter is correct. And the respondent department has not received any complaint from the consumer regarding malfunctioning of energy meter.

So, the detail of amount to be refunded- Penal interest on ACD interest for delayed period = 665/-.

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

- F.** Hearing was held on 05.11.2024, as scheduled. Both the parties were present during the hearing through video conferencing. During the hearing, the counsel for the appellant submitted that reply has been received yesterday and he required time to file rejoinder. The appellant is directed to submit rejoinder within 10 days with an advance copy to the respondents. The respondent may also file response to

the rejoinder within five days thereafter. The matter is adjourned and shall now be heard on 03.12.2024.

G. Hearing was held on 03.12.2024, as scheduled. Both the parties were present during the hearing through video conferencing. During the hearing, the counsel for the appellant requested for short adjournment to file response. Acceding the request of the appellant, the matter is adjourned and shall now be heard on 31.12.2024.

H. The counsel for the respondent vide email dated 31.12.2024 has submitted additional reply, which is reproduced as under:

1. That as per the instructions of the respondent department the additional reply has been submitted relating to the above mentioned issue in appeal no. 30 of 2024. The office of Superintending Engineer/Commercial for Chief Engineer/Commercial, DHBVN, Hisar had written a letter to SE/OP Circle, DHBVN, Hisar vide memo no. Ch-12/SE/c/45/2010/vol-3(part-I) dated 23-10-2024 regarding power tariff subsidy of INR 2/- unit.
2. That in this regard, it is intimated that a meeting was held under chairmanship of worthy Chief Secretary Haryana on dated 04.09.2024. The agenda of the meeting was Non-Release of Power Tariff Subsidy by MSME Department. The decision of the meeting was held that :- In order to facilitate Ease of Doing Business & to facilitate providing subsidy to the consumers, it was agreed that a mechanism for disbursement of subsidies be developed by attending the clause 4.19 Power Tariff Subsidy of HEEP 2020 policy which states INR 2 per unit upto connected load of 40 KW in 'D' category blocks & 30 KW in 'C' category blocks at source only for Micro & Small Enterprises. The proposed amendment should revise the subsidy to INR 2 per unit for industrial units having connected load of upto 40 KW in 'D' category blocks and 30 KW in 'C' category blocks. MSME Department to initiate a proposal of this amendment after the Model Code of Conduct is lifted, on the pattern of pre-existing EPP-2015 policy. The amended scheme should include provisions of advance payments also as per Section 65 of the Electricity Act with quarterly reconciliation. Approval for the payment of subsidies to be disbursed to DISCOMs from April 1, 2021 onwards up till the policy scheme amendment may also be sought retrospectively.
3. That it is very important to mention here that the decision is pending till date on the part of new policy formation by DHBVN, thus power subsidy of Rs. 2 per unit is not payable to the appellant.

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

- I.** Hearing was held on 31.12.2024, as scheduled. Both the parties were present during the hearing through video conferencing. During the hearing, the counsel for the appellant requested for adjournment to file response owing to his ill health. Acceding the request of the appellant, the matter is adjourned and shall now be heard on 04.02.2025 at 2:30 P.M. through video-conferencing. No further adjournment shall be allowed.
- J.** The counsel for the appellant vide email dated 31.01.2025 has appended the reply to the rejoinder submitted by the respondent, which is reproduced as under:
1. The contents of the appeal filed by me are reaffirmed and reiterated to be correct and I rely upon the same in the present submission. The same is to be read as part and parcel of this submission and the same is not being repeated for the sake of brevity. I deny and dispute the contents, averments, and statements made by SDO Op City Sub Division DHBVN Narnaul in the reply to the present case which are contrary to or inconsistent with what has been stated hereinafter.
 2. That the present rejoinder is submitted in response to the reply filed by the respondent SDO through his counsel on dated 30.12.2024.
 3. That During the hearing it is submitted that unless hereinafter specifically admitted, each averment in the reply of respondents shall be deemed to have been denied in its entirety as though herein specifically set forth and traversed. A bare perusal of the reply dated 30-12-2024 makes it clear that it is nothing but an abuse of the process of law and without any merits.
 4. That the Complainant reserves the right to file additional evidence, including, but not limited to, additional documents and witnesses as well as the expert opinion, should the same become inevitable at any stage of the proceedings and/or arising out of the further submissions made by the respondents.
 5. That a bare perusal of the reply filed by the respondents would show that their submissions are totally vague, full of baseless denials and without any specific answers to the issues raised in the complaint. The respondents have only presented a concocted story and have miserably failed to answer the points of substance of the dispute in hand. It is evident that the respondents

are only trying to escape from their liability by false, vague and baseless denials.

6. The respondent in his reply tried to misleading the Hon'ble Ombudsman by referring two letters, one is sent to SE Op Hisar from the office of SE Commercial Hisar and another one is the Minutes of Meeting held on 4th September 2024 at 12 noon under the kind chairmanship of worthy Chief Secretary, Govt of Haryana at Chief Secretary Committee Room, Civil Secretariat Chandigarh for discussing the issue of non-release of power tariff subsidy by MSME Department.
7. A bare perusal of the letter by respondent having subject "Regarding complaint of Sh. Sanjay Kumar M/s Chandu Lal Sanjay Kumar, Geeta Colony Barwala, Account Number 8370482898, under sub division Barwala, which was sent by SE Commercial DHBVN Hisar to SE Op Circle DHBVN Hisar vide his office memo number Ch-12/SE/C/45/2010/Vol-3 (Part-1)."

The SE Commercial DHBVN Hisar failed to understand the main issue involve here and tried to escape out by quoting the Minutes of Meeting held under the chairmanship of Worthy Chief Secretary Haryana on dated 04.09.2024.

The SE Commercial DHBVN Hisar in his above referred letter mentioned "As per minutes of meeting (copy enclosed) of ibid meeting, it was directed to Industries & Commerce Department to initiate proposal for reconsidering the clause 4.19 of HEEP Policy 2020 which facilitates the MSME a power tariff subsidy of INR 2/- Unit upto load of 30 KW in C Category blocks and 40 KW in D category blocks. Meanwhile the power tariff subsidy for loads upto 20 KW in C & D Category blocks as per Sales Circular D 43-2021 is in operation"

The submission by the SE Commercial DHBVN is incomplete and doesn't absolve him from his duties towards the adoption of government policy made by government of Haryana through gazette notification.

8. The Government of Haryana Power Department vide its notification number 23/24/2018 -3P dated 21.12.2018 issued the directions as per Section 108, sub section (1) of Electricity Act, 2003 regarding power subsidy scheme of the State Government for all industrial connection in C & D category blocks of the state with a connected load of 20 KW or less.

9. In continuation with the directions given by the State Government the DHBVN issued the Sales Circular D7-2019 and decided to grant the power subsidy @ 2/unit to all the consumer of having load 20 Kw or less in C & D blocks from 01.11.2018 onwards.

10. The State Government of Haryana notified the Haryana Enterprises & Employment Policy 2020 issued vide Gazette No 25/05/2020-41B-1 dated 29.12.2020, and “Incentive to Micro, Small and Medium Enterprises “4.19 Power Tariff Subsidy was introduced”

As per the ibid gazette notification “Inr 2 per unit up to a connected load of 40 KW in “D” Category blocks and 30 KW in “C” Category blocks at source only for Micro and Small Enterprises. The funds shall be provided by the Government to UHBVN/ DHBVN for DBT of subsidy amount.

11. In continuation with the above-mentioned policy the industries and commerce department of Haryana issued a gazette notification vide notification number 25/05/2020-41B-1 dated 29th July-2021,

This is issued in pursuance to the provision under Chapter 14 of Haryana Enterprises & Employment Policy -2020 notified in gazette vide No 25/05/2020 -41 B-1 dated 29.12.2020, the Governor of Haryana is pleased to notify the “Power Tariff Subsidy” scheme with an objective to provide affordable power suppl to the enterprises located in the state with the provision given thereinunder.

It is very well mentioned in that gazette that

A. Quantum of Power Tariff Subsidy: - INR 2/unit up to connected load of 40 KW in ‘D’ Category blocks and 30 KW in “C” Category blocks at source only for Micro and Small Enterprises.”

B. Commencement and applicability: The scheme shall be applicable w.e.f. 01.01.2021 and shall remain in operation till it is superseded by the government.

C. XXXX

D. Procedure: “the enterprise will not be required to apply for availing the benefit. The power utilities i.e. UHBVN/ DHBVN shall provide the benefit by deducting the subsidy amount in electricity bills.

12. That in continuation with the above said policy the DHBVN has issued the Sales Circular D 43-2021 “

Para 3 of the Sales Circular D 43-2021 which may be ready as

“In this context, the latest notification of Industries & Commerce Department, Haryana bearing No 25/05/2020-41B-I. dated 29.12.2020 notifying the Haryana Enterprises & Employment Policy -2020 (Which will effect from 1.1.2021) mentioning updated ‘C’ & ‘D’ blocks in the State is enclosed herewith for meticulous compliance of the instructions as per the notification No 23/24/2018-3P dated 21.12.2018 to ensure that the subsidy benefit is given to only eligible consumers.

From perusal of above it is clear that the above said circular was issued in continuation of the Gazette Notification No 25/05/2020-41B-I dated 29th July-2021.

13. The main law points here involve is:

- i. Whether the Nigam adopted the Policy of State Government?
- ii. When is the policy of State Government adopted by the Nigam?
- iii. Is there any prerequisite that consumer required to follow?
- iv. Does the complainant have the Udyam Registration Certificate?

14. The respondent here referred the Minutes of meeting held on 4th September under the kind Chairmanship of worthy Chief Secretary Haryana, on perusal of

This it has been observed that the agenda of this meeting was “Non-Release of Power Tariff subsidy by MSME department as per preexisting power tariff subsidy scheme EPP 2015 policy “Not as per the policy issued in 2020.

In third para of the meeting it was mentioned “it was informed that presently under existing power tariff subsidy scheme of HEPP 2020 (effective from 1.4.2021) the subsidy of Rs 2/unit was revised to connected load of 40 KW in D category and 30 KW in C category at source only for Micro & Small Enterprises. However, Discoms are allowing the subsidy @ 2/unit to the C & D category having load of 20 KW as per the notification issued by Energy Department on 21st December, 2018

Further In para 4 of the meeting “Chief Secretary, Haryana enquired that what is the mechanism to identify Micro and Small Industries, MSME authorities informed that the same is based on voluntary disclosure by the unit in the term of URC (Udyam Registration Certificate)

15. That as per the doctrine of promissory estoppel the respondent cannot deny the power subsidy @ 2/unit in any such condition which is not in Nigam's Sales Circular.

In the present case, learned counsel for the petitioner has referred to the judgment passed by the High Court of Himachal Pradesh at Shimla in CWP No.4599 of 2013 along with connected matters, case titled as 'M/s Jaiprakash Associates Ltd. vs. State of H.P. and others', decided on 04.12.2023; M/s Pawan Alloys and Casting Pvt. Ltd. Meerut etc. vs. U.P. State Electricity Board and others 1997 AIR (Supreme Court) 3910; and Pournami Oil Mills vs. State of Kerala and another 1987 AIR (Supreme Court) 590 on the proposition that once an incentive has been granted and acted upon by the petitioner, the incentive cannot be withdrawn with retrospective effect. The rule of estoppels will operate against the authorities on the ground that there is legitimate expectation from the Government Departments to grant the benefit.

Complainant is placing reliance on similar matter the Supreme Court in the case M/s Pawan Alloys and Casting Pvt. Ltd. (supra). The Supreme Court was examining a case where the U.P. State Electricity Board had granted incentives to set up new industries for a particular period. Subsequently, this benefit was withdrawn by the Board. The Supreme Court examined and held that the withdrawal was made on account of any public interest and hence it was held that it was barred by promissory estoppels and the Board had granted the benefit for a period of three years and the benefit could not be withdrawn before three years. The units had already been set up. Relevant paragraph 38 of the said judgment reads as under: -

“38. We fail to appreciate how the aforesaid decision can advance the case of respondent- Board in the peculiar facts of this group of matters. As we have noted earlier here is a converse position where the Board presumably appears to have accepted the guidelines and the directions given by the State of U.P. under Section 78A of the Act and it adopted the scheme of incentive rebates for new industries by promulgating its own tariffs in exercise of its powers under Section 49 read with Section 78A of the Act and it was the Board itself which had given such a promise and held out such representations to the newcomer industries by the first three notifications as seen above. Once that was so the question of compelling the Board to promulgate

such policy would not survive for consideration in the present cases. It is obvious that if the Board had not promulgated such policy the Court could not have compelled the Board to give such concessions. Here the question is having itself promulgated such a policy whether the Board can go back upon it prematurely. The aforesaid decision of this Court had no occasion to consider this aspect of the matter.”

In a recent judgment given by the Himachal Pradesh High Court on 4th of December, 2023 in CWP No.4599 of 2013 (supra), the Court was examining the industrial policy of 2004 and which was aimed to attract the entrepreneurs to set up the projects in the backward areas of the State and in return, promised off-setting to some extent capital cost for setting up the units in remote and difficult areas due to locational disadvantages in form of tax concessions. The units acted upon the promise extended to them by the State for investing in the backward panchayats of the State categorized as Tax Free Zones. The promise exempted from payment of VAT/CST for a period of ten years from the date of commencement of production. The State Government cannot be permitted to assert that it was entitled to withdraw the tax concessions and direct the industrial units to pay VAT/CST merely because in the subsequent years, the Panchayats where the petitioner's units were set up and de-notified and no longer carried the backward status. The doctrine estoppel was applicable and the State was bound to follow the Industrial Policy, 2004 and the Rules framed thereunder. The action of the respondent in withdrawing the tax concessions granted to the petitioner units held to be not in consonance with law. It was held that the notification withdrawing the backward area status of the concerned Panchayat has only prospective effect. It will be applicable to industries being set-up after the date of withdrawal of notifications. They cannot be applied retrospectively to the petitioner units which had already come into production by the time the backward areas status was withdrawn from such Panchayats. The writ petition was allowed and the notices asking the petitioner to deposit the tax were quashed and set aside. The petitioners were held entitled to tax exemptions in terms of the Industrial Policy, 2004, Incentives Rules 2004 and the statutory exemptions notifications dated 30th of March 2005 (GST and CST) and 19.01.2006 (VAT) till coming into force of GST regime in the year 2017.

The ratio of all two abovesaid judgments is directly applicable to the facts to the present case.

Prayer

In view of the facts and circumstances as stated above, it is most humbly submitted and prayed that this Hon'ble Forum be pleased to:

- a) Allow the appeal in favor of the appellant and set aside the Impugned Order dated 20.06.2024 passed by the Ld. CGRF, DHBVN in Case No. 4713/2024
- b) Direct the Respondents to allow/refund power tariff subsidy @ 2 /unit from 01.01.2021.
- c) Direct the Respondents to pay Rs.1,00,000/- towards cost of mental agony and harassment.
- d) Pass any such other order(s) as this Hon'ble Forum may deem fit in the interest of justice.

K. Hearing was held on 04.02.2025, as scheduled. Both the parties were present during the hearing through video conferencing. During hearing, the counsel for the appellant referred DHBVN Sales Circular No. D-43/2021 for claiming subsidy @ 2 per unit up to connected load of 40 kW in 'D' category blocks and 30 kW in 'C' category blocks at source for Micro and Small enterprise in this appeal. Per contra, SDO is directed to provide the comments on the above Sales Circular by 10.02.2025. The matter is adjourned and shall now be heard on 11.02.2025.

L. The respondent SDO vide email dated 10.02.2025 has submitted reply in compliance of interim order dated 04.02.2025, which is reproduced as under:

It is respectfully submitted that the complainant/Appellant holds a Low Tension (LT) category connection with a sanctioned load of 40 KW. The Appellant is seeking subsidy benefits as outlined in the Haryana Government Gazette Extraordinary, published by the Authority of the Haryana Government, Industries and Commerce Department, under Notification No. 25.5.2020 – 41B, dated 29th July 2021. The Appellant refers to the eligibility criteria outlined in Point No. 3 and the procedure mentioned in Point No. 4 of the said notification.

However, according to Nigam Sales Circular No. 43/2021, the power subsidy benefits for industrial connections have been limited to connections with a connected load of below 20 KW in C and D category blocks. Upon consultation with the commercial wing, and as per Point No. 3 of the aforesaid mentioned circular, the updated C and D blocks in the state have been specified in accordance with the latest notification from the Industries and Commerce Department, Haryana,

bearing NO. 25.05.2020-41B dated 29.12.2020 (effective from 01.01.2021). It should be noted that the subsidy is currently governed by the instructions detailed in Notification No. 23.24.2018-3P, dated 21.12.2018.

Additionally, the office of the SE/Commercial, DHBVN, Hisar, issued instructions through memo No. Ch-12/SE/C/45/2010/Vol-III(Part-I), dated 10.02.2024, which further clarifies the issue and provides clear cut justification.

Further, as per the minutes of the meeting (MOM) held on 4th September 2024, under the chairmanship of the Worthy Chief Secretary, Government of Haryana, regarding the non-release of power tariff subsidies by the MSME Department, it was mentioned in the decisions section that the amended should include provisions for advance payments also as per section 65 of the Electricity Act, with quarterly reconciliation. Approval for the payment of subsidies to be disbursed to DISCOMs from April 1, 2021 onwards until the policy/scheme amendment may also be sought retrospectively.

Furthermore, the latest directive, DO No. 09/SE/C/LUOSC/45/10-IV, issued by the Worthy Managing Director of DHBVN on 7th January 2025, discusses the reimbursement of pending subsidies and seeking the approval of amendments of Clause 4.19 of the HEEP 2020 for the ease of doing business and framework of earlier policy.

It is important to note that this office does not have the authority to impose or adjust any subsidy without prior approval from higher authorities. As soon as Nigam adopts the amendments in accordance with the Haryana Government Gazette No. 25/05/2020-41B-1, the relevant subsidy amount will be adjusted in the bill. Therefore, it is respectfully requested that the case be dismissed.

M. The counsel for the appellant vide email dated 10.02.2025 has submitted written arguments, which is reproduced as under:

1. That respondent in his reply submitted that “However, according to Nigam Sales Circular No. 43/2021, the power subsidy benefits for industrial connections have been limited to connections with a connected load of below 20 KW in C and D category blocks. Upon consultation with the commercial wing and as per Point No. 3 of the aforementioned circular, the updated ‘C’ and ‘D’ blocks in the state have been specified in accordance with the latest notification from the Industries and Commerce Department, Haryana bearing no. 25/05/2020-41B dated 29.12.2020 (effective from 01.01.2021).

It should be noted that the subsidy is currently governed by the instructions detailed in Notification No. 23/24/2018-3P dated 21.12.2018.

- The above submission of respondent is wrong, misleading the sales circular D 43 2021 superseded the previous sales circular D-23/2021 (which superseded sales circular D-7/2019, the sales circular restricted with 20 KW load).
- As per sales circular D-43/2021, the subsidy is to be given to 'eligible consumer'.
- The complainant is the 'eligible' consumer having URC certificate and falls under the MSME category.
- It's nowhere mentioned in the sales circular D 43-2021, that subsidy is restricted up to 20 KW, the respondent is just making their own perceptions.

2. Respondent in his reply submitted a copy of letter which was sent by Worthy Managing Director DHBVN to Director General MSME GOH, with the subject Reimbursement of pending subsidies and amendment in power tariff subsidy scheme for industrial unit in C& D category of Blocks.

- In this letter only two points were raised with the MD DHBVN, first one is related to reimbursement of pending subsidy amount and second one is amendment to coverage.
- A detailed submission has already been submitted by us covering both these, in the reply submitted by us on 31 Jan/2025 and 3rd Feb-2025.
- Here the amendment to subsidy coverage is only related to the industries which are not having the URC (Udyam Registration Certificate), moreover the point of amendment arises due to the difficulty in differentiating the category of industries raised by the discom.
- The complainant already has the URC and amendment in the policy is not affect his eligibility.
- That the State Government of Haryana notified the Haryana Enterprises & Employment Policy 2020 issued vide Gazette No 25/05/2020-41B-1 dated 29.12.2020, and as per Annexure 4 "Incentive to Micro, Small and Medium Enterprises "4.19" Power Tariff Subsidy was introduced"
- As per the ibid gazette notification Inr 2 per unit up to a connected load of 40 KW in "D" Category blocks and 30 KW in " C" Category blocks at

source only for Micro and Small Enterprises. The funds shall be provided by the Government to UHBVN/DHBVN for DBT of subsidy amount

- This policy is exclusively for the MSME industries up to a load 30Kw in C block and 40 KW in D block.

3. As per set principle and procedure the policy issued by the Haryana government in 2020 superseded the earlier promotion policy issued in 2015, vide which the subsidy @ 2/unit was given upto 20 Kw load in C & D category.

When Government issued a new policy and as per the framework of the new policy the subsidy is to be given "only" to MSME units having load 30KW in C category and 40 KW in D Category.

But the DHBVN is causing financial loss to the Government by allowing and giving the subsidy to all the consumers (un-eligible) having load 20 KW in C & D Category and causing un-necessary harassment to the eligible consumers having URC and falls under the MSME category and are eligible for power subsidy,

And the reason shared by the DHBVN in the meeting held under the chairmanship of worthy Chief Secretary Haryana is nothing merely an excuse to deprived the eligible consumer for his legitimate right. In that meeting DHBVN said "they further informed that the department has no separate mechanism to cross check the claims made in URC. Energy department officials informed that subsidy is released on the basis of connected load and geographical location under C & D blocks, they also have no separate wherewithal to verify their micro or small status"

The above reply is self-explanatory the DHBVN express their difficulty in "wherewithal to verify the micro or small status"

The complainant is having the MSME/ URC certificate and in this case no separate mechanism required to verify his entitlement for power subsidy as per Haryana Government notification no 25/05/2020-418-1.

N. Hearing was held today, as scheduled. Both the parties were present through video conferencing. During the hearing, counsel for the appellant briefed the appeal and submitted that Sale Circular No. D-43/2021 also allows power tariff subsidy @ ₹ 2 per unit up to connected load of 40 kW in 'D' category blocks and 30 kW in 'C' category blocks at source for Micro and Small enterprise but discoms allowing the subsidy @ 2/unit to the C & D category having load of 20 kW only as per the

notification issued by Energy Department on 21.12.2018. Further submitted that firm covered under MSME and have Udyam Registration Certificate (URC). The counsel for the appellant further submitted that respondent cannot deny the power subsidy @ ₹ 2/unit in any such condition which is not in Nigam's Sales Circular.

Per contra, the respondent SDO submitted that subsidy is allowed (for load above 20 kW) @ 2 unit as per Haryana Govt. Industries & Commerce Deptt. dt. 29th July, 2021 but no policy in this regard is made by DHBVN till date for load beyond 20 kW and decision is pending on the part of new policy formation by DHBVN, power subsidy Rs. @ 2 unit is not payable to consumer.

- O.** The operative part of order dated 20.06.2024 issued by CGRF DHBVN Gurugram is reproduced as under:

After considering the reply of both the complainant and SDO and submissions made by them in the hearing. The Forum observed that subsidy is allowed (for load above 20 kW) @ 2 unit as per Haryana Govt. Gazette Extraordinary published by Authority Haryana Govt. Industries & Commerce Deptt. dt. 29th July, 2021 but no policy in this regard is made by DHBVN till date for load beyond 20 kW and decision is pending on the part of new policy formation by DHBVN, thus power subsidy Rs. @ 2 unit is not payable to complainant. Further, the SDO (OP) City Narnaul is directed to adjust / refund the ACD penal interest amount of Rs. 117/- as per his office memo no. 712 dt. 07.06.2024. The Forum decided to close the matter. The case is closed. No cost on either side.

- P.** After hearing both the parties and going through the record made available on file, it is concluded that as per Haryana Government Gazette Extraordinary notification published by Authority Haryana Government Industries & Commerce Department dated 29th July, 2021 subsidy of ₹ 2 per unit for industrial units with connected loads of up to 40 kW in 'D' category blocks and up to 30 kW in 'C' category blocks will be allowed as per point no. 3 (i) but as per Managing Director, DHBVN vide DO No. 09/SE/C/LUOSC/45/10-IV dated 07.01.2025 addressed to Director General MSME, Government of Haryana at point no. 2 of the same is as under:

"2. Amendment to Subsidy Coverage: As per the consensus reached during meeting dated 04.09.2024, the Clause 4.19 of the HEEP 2020 is required to be approved to align with ease of business and the framework of the earlier policy dated 21.12.2018".

Now subsidy of ₹ 2 per unit for industrial units with connected loads of up to 40 kW in 'D' category blocks and up to 30 kW in 'C' category blocks will be allowed after according approval to align with ease of business and the framework of the earlier policy Director General MSME, Government of Haryana (Gazette Notification No. 23/24/2018-3P dated 21/12/2018).

Q. In view of the above, policy to allow subsidy of ₹ 2 per unit for industrial units with connected load up to 40 kW in 'D' Category blocks and up to 30 kW in 'C' Category blocks yet to be finalized and the Managing Director, DHBVN vide its letter dated 07.01.2025 has already written to the Director General MSME, Government of Haryana to expedite the matter. Therefore, the decision of Corporate Forum for Redressal of Consumer Grievances, DHBVN, Gurugram in Case number DH/CGRF- 4713/2024 dated 20.06.2024 is here by upheld. The instant appeal is disposed of accordingly.

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

Given under my hand on 13th February, 2025.

Sd/-

(Rakesh Kumar Khanna)

Electricity Ombudsman, Haryana

Dated: 13.02.2025

CC:

Memo. No. 5057/HERC/EO/Appeal No. 30/2024 Dated: 14.02.2025

1. Sh. Mahabir Prasad, C/o Mahadev Wire Product, Narnaul.
2. The Managing Director, Dakshin Haryana Bijli Vitran Nigam, Hisar
3. Legal Remembrancer, Haryana Power Utilities, Panchkula
4. The Chief Engineer Operation, Dakshin Haryana Bijli Vitran Nigam, Delhi Zone, Delhi
5. The SE Operation Circle, Dakshin Haryana Bijli Vitran Nigam, Narnaul
6. The Executive Engineer Operation, Dakshin Haryana Bijli Vitran Nigam, Narnaul
7. The SDO Operation, Dakshin Haryana Bijli Vitran Nigam, City Sub Division, Narnaul.