

**BEFORE THE HON'BLE OMBUDSMAN,
UTTARANCHAL ELECTRICITY REGULATORY COMMISSION**

Case: Representation No. 1/2004 dated 13.09.2004

M/S Kashi Vishwanath Steel Ltd.,
Narain Nagar,
Bazpur Road,
Kashipur

Vs

1- Chairman,
Consumers' Grievances Redressal Forum,
Kumaon Zone, 132 KV.S/S Campus,
G.M., U.P.C.L. Office, P.O. Kathgodam.

2- Uttaranchal Power Corporation Ltd.,
Dehra Dun.

3- Executive Engineer,
Uttaranchal Power Corporation Ltd.,
Electricity Distribution Division,
Kashipur (Distt. Udham Singh Nagar)

In the matter of:

Representation against the Order of the Consumers' Grievances Redressal Forum dated 23.7.2004 passed on the complaint of M/S Kashi Vishwanath Steels Ltd. Vs. the Uttaranchal Power Corp. Ltd., Dehra Dun dismissing their request for redress of grievance of the complaint demanding the refund of Rs.17,35,168.92 charged by the U.P. Power Corporation Ltd. as late payment surcharge over the installments amount pertaining to the payment of 15% surcharge from Sept. 2000 to October 2001 amounting to Rs. 95,66,234.00 that had earlier been waived off by the UPPCL but which order was declared void by the Hon'ble High Court, Allahabad in the Writ Petition No. 40692 of 2000 of M/S L.M.L., Kanpur Vs. State of Uttar Pradesh & Others.

Quorum

Sri J.C.Pant

Ombudsman

Date of award

8.12.2004

AWARD

A Representation against the Decision of the above Forum was filed before the Uttaranchal Electricity Regulatory Commission vides the Complainant's Representation No. KVS/04-05 dated 27.8.2004.

At that time the proceedings for appointing the Ombudsman and setting up his office were still under way. This Representation has therefore been listed in the Ombudsman's office on 13.9.2004 after he took office, as Appeal No. 1/2004 of 13.9.2004.

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Copies of the Representation were issued to the Respondents for filing their reply and hearing was scheduled for 6.10.2004. None of the Respondents appeared on the above date and notices were again issued fixing the next date for replies and hearing on 20.10.2004.

Information was also specifically called for from the Licensee (Uttaranchal Power Corp. Ltd) through a separate letter.

On 20.10.2004 Learned Counsel for the Complainant was given a detailed hearing in presence of the Learned Counsel for the Respondents. The Learned Counsel for Respondents argued that as he was not prepared to argue on that date, another date be given.

On 3.11.2004 Learned Counsel for Respondents presented his arguments, but Learned Counsel for the Complainant was absent, due to illness.

On the next date 25.11.2004 given for further arguments if any, the Learned Counsel for Complainant again did not attend, as he was unwell. Accordingly the next date was fixed for the award on 8. 12. 2004.

This is a case of representation against the order of the Learned Consumers' Grievances Redressal Forum of the Kumaon Zone, which in its Decision dated 23.7.2004 rejected the Complaint filed by the Complainant M/S Kashi Vishwanath Steels Ltd., against the imposition of the late payment surcharge of Rs. 17,35,168.92 and also rejected the demand for its refund.

The Complainant has filed this representation on grounds, which are not materially different from those filed earlier in their complaint to the Forum.

The brief facts and circumstances of the case are as follows:-

1. The Tariff enforced by the U.P. Electricity Regulatory Commission (UPERC) vide its Tariff Order 2000-2001 dated 27.07.2000 was effective with effect from 9.8.2000.
2. The UPERC order for the Rate Schedule HV-2 is at its pages 69-70 of the UPERC Tariff Order 2000-2001 and correspondingly the UPPCL issued its HV-2 Tariff. It is an undisputed fact that this Rate Schedule HV-2 was applicable to the Complainant.
3. This Rate Schedule also imposed a Late Payment Surcharge under the heading "Surcharge Provision for Late Payment" that is at Page 76 in the UPERC Order. This order says, "Therefore a single rate of 2% per month or part thereof for the period of delay from the due date should be payable by the consumer". This was made applicable to all categories of power consumers by the UPERC.

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Accordingly the UPPCL made the same provision in its HV-2 Tariff under the heading "For Delayed Payment". It lays down, "In the event of any bill of whatever nature it may be, not being paid by the due date specified therein the consumer shall pay an additional surcharge at the rate of 2% per month or part thereof on the unpaid amount of the bill for the period payment is delayed beyond the due date specified in the bill without prejudice to the right of the UPPCL to disconnect the supply."

4. The Tariff HV-2 formulated by the UPERC emphasized a minimum of 500 Hours of guaranteed supplies to consumers on independent feeders emanating from 400/220/132 kV Sub-Stations, and for this these consumers were to pay an additional charge of 15% of the total amount of the bill in a month.

If however the UPPCL failed to ensure this minimum guaranteed supply of 500 hours in a month it was to give a rebate @ 1% on the total amount of the bill for every shortfall of 10 hours or part thereof in a month.

It is pertinent to observe the UPERC's emphasis is on a guaranteed quantity of electricity in a specified period of time to consumers each month to be able to run their industry uninterruptedly and so also there is the emphasis on the quality of supply guaranteed by ensuring reliability and continuity of supply by the UPPCL.

5. Soon after the enforcement of this Tariff by the UPERC and issue of the same by the UPPCL a circular No. 1423 dated 8.9.2000 was issued by the Chief General Manager (Commercial) of the UPPCL, which materially altered the tariff provisions provided by the UPERC.

In this circular the above cited independent feeder consumers could be exempted from the 15% surcharge and all they had to do was to send a letter by registered post that they did not want a guaranteed supply of 500 hours in a month.

The alteration in the UPERC Tariff by the UPPCL in their circular No. 1423 of 08.09.2000 stands out in its Para 2 (d). To start with, this Para sets out the original UPERC conditions that consumers of HV-2 category being given supply from feeders emanating from 400/220/132 kV Sub-Stations are to be given guaranteed supply of 500 hours in a month and consequently a surcharge of 15% is to be imposed on them.

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"bl Js kh ds mi HkkDrkvka dks 500 ?kUVs ifrekg fo| r vki firz l fuf' pr dh t k; xh A fd l h ekg ea 500 ?kUVs l s de fo| r vki firz gkus ij i R; d 10 ?kUVs ij muds fo| r fcy es l i fr' kr dh NW nh t k; xh " A

But then it goes on to introduce its own guide line which makes the material alteration as follows:-

" ; fn bu Loré i k'kd ka l s t Ms mi HkkDrk 500 ?kUVs fo| r vki firz dh xkjUVh ugha pkgrs gá rks , j h voLFkk es muds fcyka ij 15 i fr' kr l j p k t l ugh y x k ; k t k ; x k A , j s mi HkkDrk i a h d r i é } k j k v f ? k ' k k l h v f H k ; U r k f o r j . k d k s l i p r d j a s f d o s 500 ?kUVs fo| r vki firz dh xkjUVh ugh pkgrs gá A v f / k ' k k l h v f H k ; U r k b l l E c U / k e s d k ; k a y ; K k i u f u x i r d j a s A ; f n b l J s k h d k mi HkkDrk d k b l f o d Y i u g h a n r k g s r k s m l s 500 ?kUVs l f u f ' p r f o | r v k i f i r z d h t k ; x h r F k k 15 i f r ' k r l j p k t l f y ; k t k ; x k " A

6. It would not be out of place here to place on record the observations of the Hon'ble Allahabad High Court regarding the above alteration.

The Hon'ble Allahabad High Court in C.M.W.P. No. 40692 of 2000 between M/S L.M.L. Ltd., Kanpur and State of U.P. and others had observed that:-

"The contention raised on the basis of circular dated 8.9.2000 issued from the office of Chief General Manager (Commercial), UPPCL, is equally untenable. The provision in later part of paragraph 2 Ka thereof which lays down that 15 percent surcharge would not be levied in case a consumer getting supply from an independent feeder emanating from 400/220/132 K.V, Sub-station gave an option that he did not want a guarantee of 500 hours of supply in a month, is contrary to the tariff approved by the Commission. The Commission in its order approving tariff had merely provided that in case of shortfall in 500 hours of assured supply in a month, a rebate of 1 per cent for each 10 hours short-fall will be admissible on the total amount computed under: "Rate of Charge". The circular while retaining this provision had made an additional provision to the effect that if such type of consumer gave an option that he did not want an assured supply of minimum 500 hours in a month, the 15 per cent surcharge shall be not levied. This is clear alteration of the approved tariff, which is not permissible in law. Sri Sudhir Agarwal, learned counsel for UPPCL tried to justify the circular by submitting that after tariff has been approved by the Commission under sub-section (6) of Section 24, the holder of a supply license, while publishing the tariff in the newspapers as required by sub-section (7) of Section 24, could alter the same and the only embargo is that the tariff implemented by the licensee should satisfy the requirements of clause (a), (b) and (c) of sub-section (7). In our opinion, the contention raised is wholly fallacious. The scheme of Act which we have referred to in detail clearly shows that a tariff approved by the Commission alone can be implemented by a licensee and it has no power to alter or vary the same. The circular of UPPCL in so far as it is inconsistent with the tariff approved by the Commission is void and wholly inoperative in law.

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The petitioner, therefore, cannot get any advantage by exercising an option in terms of the circular by which it. informed by registered post that it did not want an assured supply of 500 hours in a month, "

The UPPCL Order 1423 date 8.9.2000 was thus void and wholly inoperative.

7. Initially the bill for the month of 9/2000 was issued by the Licensee (Executive Engineer Electricity Distribution Division, Kashipur) on the basis of the unaltered UPERC enforced Tariff HV-2 but it was objected to and returned by the Complainant vide his letter No. KVS/2000-01/769 dated 06-10-2000.

The Complainant stated here that UPPCL Circular 1423 of 08-09-2000 contained a clear provision as under:-

" bl i é ea Li "V mYy[k g\$ fd Loré i k\$kd vki fir/ gkus ij Hkh 500?k&slj; ure I lykb/ u pkgus ij mi HkkDrk I s 15% I jpkt / ugha fy; k t kuk g\$ A..... "

It is significant that the Complainant has omitted to state this fact in his Representation before the Ombudsman.

8. For the period 9/2000 till 10/2001 the Complainant in fact, in spite of their so called objection sent through their letter No. KVS/2000-01/769 dated 06-10-2000 to Executive Engineer, Kashipur actually availed more than 500 hours of guaranteed supplies each month without paying the additional 15% surcharge.
9. As per Hon'ble Allahabad High Court Order earlier bills issued in accordance with the changes made in the tariff by the UPPCL which were declared void and inoperative were cancelled and the bills were accordingly corrected w.e.f. 9.8.2000 the date from which the valid Tariff was in force.
10. The Complainant was accordingly informed about it as per Executive Engineer, Kashipur Letter No. R210/-EDD K/M/s Kashi Vishwanath dated 07-12-2001.

The amended bill for the consolidated amount of 15% surcharge and 1% rebate which latter was due in two earlier months came to Rs. 95,66,234.00, was sent to the Complainant with a Due Date as 07.01.2002 as per the bill accompanying the above letter No. R210/-EDD K/M/s Kashi Vishwanath dated 07-12-2001. This bill gave the stipulated time to the Complainant to pay as above.

The Respondent did not impose any late Payment Surcharge on this bill.

The bill was in effect only for the balance amount which should have been charged in accordance with the Tariff approved by the UPERC.

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Had the UPPCL not made the unauthorised changes the Complainant was to have paid the 15% additional amount on his monthly bill each month?

11. The Complainant has challenged the Order of the Hon'ble High Court, Allahabad restoring this 15% additional surcharge, before the Hon'ble High Court Nainital.

It would only suffice to say here that the Tariff HV-2 was formulated for the whole or undivided U.P. by the UPERC, through due process of the Law under the U.P. Electricity Reforms Act 1999. The UPERC was to continue to exercise its jurisdiction over Uttaranchal by the U.P. Reorganization Act Section 63(1). The Uttaranchal ERC was constituted only in September 2002.

12. The Complainant did not pay this bill of Rs. 95,66,234.00 and instead sought payment in installments. The Respondent granted installments as per its Office order No. R333 dated 12.02.2002.

Twenty installments of Rs. 5,00,00.00 were fixed by the Respondents and the Complainant starting making the payments on the due dates now fixed for the installments.

13. The seeking of installments is in fact a request for late payment of the bill and in this case it was over the deferred payments of the monthly installments of Rs. 95,66,234.00. The late payment of the bill invites the "Late Payment Surcharge" imposed in the Tariff HV-2 (and all other tariffs) by the UPERC and UPPCL.

It is a legal obligation under the above provisions to charge the late payment surcharge for delayed payment.

It is also a fact that needs to be stated here that it is a well established practice handed down from the erstwhile UPSEB to charge the Late Payment Surcharge in such cases of installments as per its circular No. 1422 dated 29.06.1992.

14. The Complainant challenged the charging of the Late Payment Surcharge before the Learned Consumers' Grievance Redressal Forum, Kumaon Zone, P.O. Kathgodam by filing its Complaint.

This Complaint was dismissed by the Learned Forum vide its Decision dated 23.07.2004.

15. The Learned Counsel for the Respondents makes this point that even had this circular No. 1422 dated 29-06-1992 not been cited the Licensee was empowered to charge the late payment surcharge as laid down in the HV-2 tariff of the year 2000-2001.

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16. Based upon the above mentioned points the Complainant has no valid ground to complain over the charging of late payment surcharge amounting to Rs. 17,35,168.92 considering the fact that it is a legal provision in the tariff formulated by the UPERC under the relevant Law, UP Electricity Reforms Act, 1999 upheld by the Hon'ble High Court, Allahabad.

AWARD

Having diligently and carefully considered all the facts of the Complainant's Representation, against the Decision of the Learned Consumers' Grievance Redressal Forum Kumaon Zone, P.O. Kathgodam rejecting their complaint demanding refund of the late payment surcharge of Rs. 1735168.92 on the amount of Rs. 9566234.00, and after giving due hearings to the Complainant through their Learned Counsel as also the Learned Counsel of the Respondents, it is observed that after considering all the circumstances of the case, I come to the conclusion that the Licensee was legally bound by the relevant provisions of the Tariff HV-2 duly enforced by the UPERC to charge @ 2% late payment surcharge on the installment of the above mentioned amount of Rs. 9566234.00 and that there is not merit in this representation seeking to quash the decision made by the Learned Consumers' Grievance Redressal Forum, Kumaon Zone, P.O. Kathgodam, accordingly this Representation by the Complainant seeking the refund of Rs. 1735168.92 is here by rejected.

Directions in this and such similar likely matters are also being issued to the Licensee for their compliance.

Date: 08.12.04

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