

Before the Hon'ble Ombudsman

U.E.R.C., 24 Vasant Vihar, Phase-II,

Dehradun-248006

Phone -(0135) 2762120

Case:- Representation No. 4/2005 dated 2.4.2005

Complainant.

Sri Lalita Prasad Jassola ,
S/O Sri Mahanand Jassola ,
M/S Garhwal Diesel Engg.Works,
Garrage Road,
P.O. Kotdwar,
Distt. Pauri Garhwal

Vs.

Respondents.

1. Chairman Consumers' Grievances Redressal Forum,
Garhwal Zone,
Dehradun.
2. Uttaranchal Power Corpn.Ltd.,
through its C.M.D.
3. Executive Engineer,
Electricity Distribution Division,
Kotdwar,
Distt Pauri Garhwal
4. Assistant Engineer,
Meter Testing Lab,
Nazibabad Road,
Kotdwar.

Counsel for the Complainant.

Represented by the Complainant
himself,

Counsel for the Respondents.

Sri S.M.Jain, Advocate,
Reg. No. 4719/62 Ex. D.G.C.(Civil)
Dehra Dun.

In the matter of:

Representation against the decision of the Learned Consumers' Grievances Redressal Forum, Garhwal Zone, Dehradun dated 4.12.2004 informing the Complainant that the "billing for 6/04, 7/04 and 8/04 for 3 months was done for defective meter @ 216 Units per KW/Month i.e. 1080 units per month and thereafter on the basis of his average for previous months when the meter was working. The billing has been found to have been done as per provisions of the tariff schedule RTS-2 applicable on the consumer and we find no discrepancy in the same. This has been explained to representative of the Complainant who agreed for payment of the bills as have been sent to him:"

"In view of above discussions there is no merit in the Complaint and the same is dismissed with directions to the complainant for payment of the bills at the earliest."

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Quorum

Sri J.C.Pant ... Ombudsman.
Date of Award ... 18.5.2005

AWARD.

A representation against the above mentioned decision of the Consumers' Grievances Redressal Forum, Garhwal Zone, Dehradun was filed in this office on 2.4.2005 and accordingly was registered as Representation No. 4/2005. Copies of the representation were sent to the Licensee for submission of the point wise reply and the hearing was scheduled for 20.4.2005.

On 20.4.05 both parties were present. The Complainant Sri Lalita Prasad Jassola and the Learned Counsel for the Licensee, Sri Surendra Mohan Jain, were present. The Licensees' point wise reply was submitted and a copy of the same was given to the Complainant. The Complainant submitted another letter along with enclosure, copy of the same was given to the counsel for the Licensee, and the Licensee was directed to submit their replies to it. The next date was then fixed for 4.5.2005.

On 4.5.05 the arguments in the case were heard between the parties represented by Sri Surendra Mohan Jain, Counsel for the Licensee and Sri Lalita Prasad Jassola. Accordingly 18th May 2005 was fixed for the award in this case.

The Complainant has filed some additional facts that materially affect the case which the Licensee has not denied.

The facts of the Representation are as under:-

1. That the bills for an electric connection of 5 K.W. are issued in the name of Sri Lalita Prasad Jassola, Garrage Road, Kotdwar under the Rate Schedule RTS-2.
2. At the same time the Complainant has been making representations to the Learned Forum with regard to the "5 H.P. connection" of his M/S Garhwal Diesel Engineering Works.
3. That the Complainant's connection is a very old one where an "old type of meter" meaning a mechanical meter was installed which the Complainant says was working satisfactorily. The Licensee has not denied the above nor adduced any proof of this meter being defective.
4. However as per the admitted fact on both sides the above meter was replaced on 12.7.2003, by an electronic meter of ABB Make, No. ABB2332 K-03. The photocopy of the sealing certificate says "Old meter replaced by new Deptt. Electronic meter as per instruction of D.G.M."
5. In his Complaint before the learned Forum, Sri Jassola has made a running narrative of how the old meter was running quite satisfactorily when it was replaced by the above electronic meter at the Licensee's behest, which then

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started giving trouble soon thereafter, and when Sri Jassola persisted with his complaint about its defect, he was pressurized by the Licensee's officers to deposit Rs. 6,000.00, the cost of an electronic meter and that he should bring a new meter from the market. Here the point that needs attention is that the new electronic meter was stated to be defective quite soon after it was installed at the premises of the Complainant's Workshop and this was also mentioned in the Complaint before the learned Forum but the same appears to have been totally ignored by the Forum.

6. This omission of the grievance which takes almost the entire length of the Complaint before the Forum is surprising, to say the least. The grievance thus centres on an expensive new electronic meter installed by the Licensee in July 2003, which became defective within 4 -5 months of its installation, as is established by the Complainant's additional Representation given on 20.4.05 before the Ombudsman. A copy of this was also given to the Licensee who has not denied the contents which show that the new meter had gone defective in December 2003, and is duly admitted in the document given on 20.4.05, by the Licensee's concerned officers' and officials' notings thereon.
7. The central core issue of this Representation is thus the premature burn-out of the new expensive electronic meter installed by the Licensee, the rest of the grievance follows from this fact.
8. The Forum's decision that the meter installed in July 2003 had gone defective only in the month of 6/2004, 7/2004 and 8/2004 is not borne out by facts of the case and this makes a material difference to the outcome of this case.
9. Reference is now cited to the Hon'ble UERC's interim order dated 9.02.2004 on the Misc. Application No.36/2004 of Dr. S.P.S. Rawat, in which the Hon'ble Commission observed:

"It has been envisaged therein that in such cases billing will be done on the basis of average consumption of past 3 billing cycles immediately preceding the meter being found defective or the normative consumption stated therein, whichever is higher. The intention of this provision was that during the period between the meter being found defective and its replacement by the licensee, the consumer should be asked to pay charges as, near as possible to his likely consumption."
10. The last sentence in the above observations gives the intention behind the proviso, which has been entirely missed in this case.

For the period 6/04, 7/04, 8/04 the Licensee has charged @ 216 units/Kw/ month making it 1080 units for 5 Kw. (the load is stated to be 5 H.P. which is only 3.75 KW) according to its RTS-2 -Non Domestic tariff that has been prescribed by the UERC. The bill for these months charged to the Complainant are Rs. 3,977.00 each month.

Prior to the period in which the meter was "declared" defective by the Licensee the bill for the past 3 Months were Rs. 1,050.00, 1,056.00 & Rs . 1,051.00 respectively.

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11. The correctness or otherwise of the applicability of the proviso for "defective meters" in the RTS-2 issued by the Commission is now examined in the light of the above Paras and further facts as enumerated and examined hereunder:

Firstly, the UERC order presumes that it is as a result of the Licensee's prudent house-keeping that leads it to discover that the meter has been defective (if... the meter being "found defective"). This is certainly is not the case here. The old Mechanical Meter was not proved to have been defective or to have been "found defective". In this case the entire costly exercise of replacing a mechanical meter in 7/2003 has been shown to have been in-fructuous as the consumption trend in the post replacement period remains unaltered.

The "defective meter" being alluded to in the UERC Tariff for purpose of corrective action is the one already installed prior to 7/2003 i.e. the "old mechanical meter" and not the electronic meter gone defective in December 2003, which has been purportedly shown to have gone defective in 6/2004 by the Licensee. This interpretation of the UERC ruling needs to be read in the light of the UERC observation quoted earlier in the Misc. Application of Dr. S.P.S.Rawat in which the Hon'ble Commission is at pains to stress".....

"The intention of the provision was that during the period between the meter being found defective and its replacement by the Licensee the Consumer should be asked to pay charges as near as possible to his likely consumption"

The mechanical meter was not proved to have been defective which is shown by its replacement without its checking as brought out in the next Para.

12. The fact is that the original mechanical meter has not been shown to have been defective at all by the new electronic meter. So why does the question of charging the rates for a defective meter arise?

In the first place the decision to change the original mechanical meter by an electronic meter was taken "as per instruction of D.G.M". It is a presumptive action not founded on correct established practice.

A normal expected practice has been to keep the old meter in place and install the new meter as a check meter. In case the old meter was slow or sluggish beyond the mandatory provision then only was it to be replaced.

This has not happened in this case and is the first of the gross errors on the part of the Licensee.

The new electronic meter was reported defective in December 2003 but the Licensee has suppressed this fact - it is not explained why?

Secondly this new meter was the cause of a Complaint and the Complainant had reported this in his Complaint filed before the learned Forum.

The Licensee has suppressed this fact before the Forum or that the learned Forum has ignored this material fact which thus has an important bearing on this case.

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This expensive electronic meter costing either Rs. 4200.00 or Rs. 6000.00 became prematurely "defective". As per the evidence gathered from this case the meter did not become defective due to any cause attributed to the Complainant.

The evidence is both direct and circumstantial as follows:-

- (i). There are Licensee's cut-outs installed on the outgoing load side, so in the event of any fault in the consumer's installation these should blow up and protect the meter.
- (ii). The Licensee has not stated that there was a 'blowout' of its fuse or fuses due to any fault on the consumer's installation nor has it charged the mandatory Rs. 20.00 for replacement of this fuse provided by the Commission which shows there was no blowout and hence no fault on the consumer's side.
- (iii). The fact that the defect in the meter or in its installation though fully acknowledged by the Licensee's Officers and officials on 31.12.2003 has been subsequently suppressed by the Licensee goes to establish that the cause of defect lies on the part of the Licensee.
- (iv). The Licensee has either not cared to go into the details of how such an expensive meter became defective or has suppressed the facts on finding the conclusions damaging to its working.

There appears no reason why the consumer must pay damages for the compounded errors of the Licensee and its deliberate suppression of its errors.

13. In the light of the above it is established that the exercise of replacing the old mechanical meter by an expensive electronic meter was badly planned and carelessly executed and was in fact infructuous as the consumption has remained of the same order. So here again the conclusion is that the criteria of applying the simplistic solution of charging 216 Units/KW/month to "the meter being found defective" does not apply. The meter "originally installed" at "the consumer's premises" was not found defective but the new meter that should have been called the "check-meter" and was in fact that, became defective or was installed in a defective manner. This is an entirely different situation not at all covered by the Hon'ble Commission's directive aimed at giving a, realistic consumption basis where the installed meter is discovered to have been running defective by the Licensee's own checking.

The spirit behind the UERC provision of 216 units/Kw/month cannot be ignored.

This has been stated quite clearly by the UERC in its ruling in the case of Dr. S.P.S.Rawat that the intention is that the consumer should be asked to pay charges near as possible to his likely consumption.

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The likely consumption has been set-down in the chart in the Licensee's rejoinder and is an average of 88 units for the last 4 months which the final electronic meter had recorded without dispute. In no case can 1080 units that were being billed each month during the disputed three months, which are 12 times more than the average of 88 units can be called the charges "near as possible to his likely consumption".

It appears that the Licensee's Officers have not applied their mind in dealing with this grievance.

It is not a case where the meter is running defective which has not been reported defective by the consumer and is found out by the Licensee's own exertions. In that case the Licensee can have a valid point of safeguarding its interests by assessing consumption on its own terms. It cannot be so in this case. The Licensee did not catch a defective meter in this case. Rather it probably thought that putting an electronic meter instead of a mechanical meter would give a better consumption recording. The electronic meter has simply validated the consumers' past consumption record.

That being the case the imposition of a 12 times more consumption in an interim period of three months (and then again reverting to charging him on the basis of his average for previous months when the meter was recording below the minimum monthly guarantee) is not justified in the spirit and substance of the Hon'ble Commission's ruling.

14. The other aspect of the-grievance is that the Complainant has been asked to pay the cost of the electronic meter.

In this particular case the electronic meter installed to check upon the old meter has been shown to have gone defective due to the Licensee's own fault. So going by the above the cost of Rs. 6000/- or Rs. 4200/- being charged as cost of the meter from the complainant is not chargeable from him and is in fact illegal in the circumstances.

AWARD.

Having diligently and carefully considered all the facts and circumstances of the Complainant's representation against the decision of the learned Consumers' Grievances Redressal Forum, Garhwal Zone and after giving due hearings to both the parties, and having thus examined all the facts in the preceding paras, I come to the conclusion that the Complainant is entitled to relief both in the matter of not being charged the cost of the meter and for the withdrawal of the charges @ 216 Units/KW/Month for the months of 6/04, 7/04 and 8/04 and that the basis of charging in the aforesaid months shall instead be the monthly average consumption when the meter was not under doubt by any of the parties.

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Accordingly the order of the learned Forum is set aside as it failed to take into cognizance the basis of grievance of the Complainant that a working meter was initially replaced at the Licensee's behest but, that this replaced meter became defective, which was then pointed out by the Complainant. That being so it is not a case of a meter being found defective by the Licensee for which the proviso has been made to charge @ 216 Units/Kw/month or the monthly average when the meter was running satisfactorily, whichever being higher. Neither was the meter "found defective" when in fact it was repeatedly pointed out as defective by the Complainant, nor was the imposition of @ 216 Units/Kw/month as the basis of charging the bill was in line with the Hon'ble UERC's basic intention. The intention of this provision was that during the period between the meter being found defective and its replacement by the Licensee, "the consumer should be asked to pay charges as near as possible to his likely consumption."

The earlier order of the Learned Forum is thus declared void, and the Licensee is directed to issue fresh bills for the disputed months of 6/04, 7/04 and 8/2004 on the basis as declared in the earlier part of this Award, as also it must refund any cost of the meter if the same has been recovered and that it shall report compliance within one month of this Award.

Dated. 25.5.2005

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