

BEFORE THE HONBLE OMBUDSMAN, UERC
24 Vasant VIHAR, Phase-II,
Dehradun-248006
Phone -(0135) 2762120

Case: Representation No. 2/2005 dated 15.02.2005

M/S Khatima Fibres Ltd., P.O. Khatima, Distt. Udham Singh Nagar.	Vs.	1 The Chairman, Consumers' Grievances Redressal Forum Kumaon Zone P. O.Kathgodam (Nainital) 2. Uttaranchal Power Corporation Ltd.(UPCL) through its C.M.D 3. Executive Engineer, Uttaranchal Power Corporation Ltd., Electricity Distribution Division, Rudrapur (Distt. Udham Singh Nagar)
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Complainant

Respondents.

In the matter of :

Representation against the decision of the Learned Consumers' Grievances Redressal Forum, Kumaon Zone, P.O.Kathgodam Distt. Nainital dated 16.12.2004 dismissing the complaint of the Complainant and upholding that the sum of Rs. 2,38,140.00 raised by the Licensee in December 2003 for the period April '97 and April'98 against an old connection of the Complainant already disconnected permanently earlier on 14.9.1998 was not time barred under Sec 56(2) of the I.E.Act 2003.

Quorum

J.C.Pant	..	Ombudsman
Date of award	..	6.04.2005

Award

This Representation against the decision of the Learned Consumers Grievances Redressal Forum, Kumaon Zone, Distt. Nainital was filed in this office on 15.2.2005 and accordingly was registered as Representation No. 2/2005 dated 15.2.2005.

Notices were issued to all concerned on 22.2.2005 for hearing on 2.3.2005.

On 2.3.2005 all parties were present. Sri Manoj Yadav learned Counsel representing the Complainant gave his preliminary arguments on his case. Licensee was represented by the learned Counsel Sri Surender Mohan Jain. The written reply of the Licensee was awaited.

The date 16.3.2005 was fixed for further hearing.

On 16.3.2005 the written reply of the Licensee was received and the learned counsel for the Licensee Sri Surendra Mohan Jain argued his case. Learned counsel for the Complainant Sri Manoj Yadav said he would present his written arguments on 22.3.05 The same were submitted on 21. 3.2005

Accordingly 6.4.2005 was listed for orders in the case.

The complainant has filed his representation on grounds which are not materially different from those filed earlier before the Learned Forum.

The issues and facts arising in the matter are: -

- 1 That M/S Khatima Fibers Ltd., P.O. Khatima had a power load of 2600 KVA which was disconnected on non-payment of dues on 14.9.1998 and there was a protracted dispute including litigation raised by the Complainant towards working out and settling the amount of the dues which lasted nearly for four years.
2. That the Licensee gave considerable relief to such consumers by offering them a relief of 50% reduction in the late payment surcharge or Rs. 10 Lac. whichever is less provided that such consumers agreed to the following conditions:-
 - i) That the consumers shall withdraw all pending litigation before the Courts within the stipulated time.
 - ii). That the consumer shall pay the installments granted under this scheme within the due time.
 - iii). That the consumer shall not in the next two years raise any dispute over this or this type of dispute over the bills for the electric charges.
 - iv). That in case of violation of the above three conditions the said relief granted shall stand withdrawn and the connection shall be disconnected from the date of such violation till the entire amount due is paid in full.

This relief was granted vide C.M.D., UPCL O.M. No. 1401 dated 1.6.2002.

3. That the new connection which had to be released only after all dues against an old connection are settled was released on 3.5.2003.
4. That in December 2003 the Licensee issued a bill amounting to Rs. 2,38,140.00 only against the old connection that had been disconnected permanently, which amount was in fact a correction of the bills raised in the past for the years April'97 and April'98.
5. The Licensee has stated that this correction in the bill has in fact been ordered by the Comptroller and Auditor General on the original bills short charged by the Licensee, which came to be finalized only after the final orders of the C.A.G. came to them in the month of August 2003 (8.8.2003).
6. It is relevant to examine just why this correction was ordered by the C.A.G. The Licensee's Executive Engineer was to have completed taking the reading of the consumer by the last three dates of the month-ending for which the bill was to be raised. But the reading was not taken within the last three month-ending dates. In this case the reading for the month of March 1997 was taken on 13.4.97 to cover the billing period 12.3.97 to 13.4.97. Similarly in 1998 the bill raised was for the period 5.3.98 to 7.4.98. The rates for fuel surcharge and establishment surcharges were at lesser rates upto the end of March each year and for the next financial year w.e.f. 1.4.97 and 1.4.98 respectively these rates were higher. Clubbing the period of March alongwith that of April under the bills of March caused the bills for these two years to be for lesser amounts than prescribed. The Licensee made the correction as per the C.A.G. report and issued the bill for the amount of Rs. 2,38,140.00 to the consumer in the month of December 2003.
7. The provision of Section 56 of the Indian Electricity Act 1948 Clause 2 states "Notwithstanding anything contained in any other law for the time being in force, no sum due from any consumer, under this section shall be recoverable after the period of two years from the date when such sum became first due unless such sum has been shown continuously as recoverable as arrear of charges for electricity supplied and the Licensee shall not cut off the supply of the Electricity".

Having examined the facts and circumstances of the case in the light of the above issues and hearings it is further stated as follows :-

The fact that stands out is that the amount of Rs 2,38,140.00 was a component charge of the original bills raised respectively in the months of April 1997 and April 1998 and was in fact, the short charged amount due to an error in good faith over the applicability of the rates of fuel surcharge and establishment surcharge.

This error was pointed out by the C.A.G's team in its final report on 8.8.2003 and accordingly the correction bill was issued to the Complainant in the month of Dec.2003.

The Complainant has cited Section 56(2) to state in effect that this component part of the bill being raised due to an error in good faith is not liable to be paid by it as it is being raised after the expiry of two years from the dates of April 1997 and April 1998 respectively.

The Clause 2 of Section 56 of the Act is not applicable in this particular case as it pertains to a running connection. The bill in question concerns a disconnected connection that has involved a protracted negotiation, withdrawal of litigations and grant of a conditional relief by the Licensee which stated inter-alia that no further dispute shall be raised over this case, or the next over the next two years

The Complainant thus cannot obtain considerable relief on one hand under the settlement made vide O.M.140 dated 1.6.2002 and deny fulfilling its obligation to pay the amount legitimately due against it owing to a clerical error, which thus goes against this settlement as well as against Natural Justice.

Even if the Clause 2, Section 56 of the Act is considered applicable in this case the Complainant has admitted in his rejoinder received on 21.3.2005 para 4 specially underlined here "That unless such sum has been shown continuously as recoverable as arrear of charges" mean such sum must be shown as recoverable as arrear of charges in the accounts of the Licensee. It is immaterial here whether the consumer is an existing consumer or not

The accounts of the licensee had been audited and the amounts billed had been shown as recoverable from the consumer starting from 13.9.99 but were referred to the Complainant for payment only when the Audit Report became final. The amount is in no way a "fresh demand", it is a correction made in the earlier demand and I.E Act does not preclude a correction made in a settlement which facilitated the new connection.

A W A R D

Having diligently and carefully considered all the facts and circumstances of the Representation against the Learned Consumers' Grievances Redressal Forum, Kumaon Zone rejecting the Complainant's Complaint and thus after giving due hearings to the Complainant and the Licensee I come to the conclusion that the Licensee has lawfully raised the bill of Rs. 2,38,140.00 following the directions of the Comptroller and Auditor General of India and that the same is to be paid being a part of the settlement earlier made with the Licensee, which declared that the Complainant was liable to pay all dues due for payment on the date of disconnection and was a precondition for the grant of the present connection.

Accordingly the Complainant's Representation is seen to have no merit and is therefore rejected. The Licensee is directed to recover this amount of Rs. 2,38,140.00, if not already recovered, within one month from the date of this order as per this award.

Dated 06.04.2005

Sd. J.C.PANT
OMBUDSMAN
Seal of Ombudsman