

**BEFORE THE HON'BLE OMBUDSMAN,**

U.E.R.C, 24 Vasant Vihar, Phase II, Dehra Dun -248006,

Phone 0135-2762120

**CASE: REPRESENTATION NO. 3/2004 DATED 16.11.2004**

Punjab & Sind Bank, Vs 1 Chairman, Consumers' Grievances Redressal

Ghat Road, Rishikesh Forum Garhwal Zone, Dehra Dun

2 Uttaranchal Power Corporation Ltd. (UPCL),

Dehradun

3 Executive Engineer,  
Electricity Distribution Division,  
UPCL,

Rishikesh

Complainant Respondents

***In the matter of:***

**Representation against the decision of the Learned Consumers' Grievances Redressal Forum, Garhwal Zone, Dehra Dun vide its decision dated 21.7.2004 informing the Complainant, the Manager, Punjab & Sind Bank, Branch Office at Ghat Road, Rishikesh that after due consideration their Complaint seeking waiver of Late Payment Surcharge was not found acceptable and they were further directed to deposit the amount of the Late Payment Surcharge immediately.**

**Quorum**

**Sri J.C.Pant - Ombudsman  
Date of Award : 23-02-2005**

**AWARD**

A representation against the decision of the Consumers' Grievances Redressal Forum, Garhwal Zone, Dehra Dun was filed in this Office on 16.11.2004 and accordingly was registered as Representation No. 3/2004 dated 16.11.2004. Copies of the Representation were sent to the Licensee and the hearing was scheduled for 1.12.2004.

On 1.12.2004 the Complainant, the Manager, Punjab & Sind Bank, Rishikesh came late. Sri Arjun Pratap Singh, Assistant Engineer (Revenue), represented the Licensee who submitted the reply. The Licensee was directed to give a copy of his reply to the Complainant to file their rejoinder. The next date was fixed for 15.12.2004.

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On 15.12.2004 Complainant filed the rejoinder, and a copy of the same was given to the Licensee's representative Sri Arjun Pratap Singh, A.E.R. Licensee was to file their reply to it on 22.12.2004.

On 22.12.2004 the Complainant filed an additional rejoinder, while Sri Arjun Pratap Singh A.E.R of the Licensee filed the rejoinder to the earlier reply of the Complainant. Accordingly the next date 5.1.2005 was given to the Licensee to file the reply to the above rejoinder

On 6.1.2005 only the Licensee's representative Sri Arjun Pratap Singh A.E.R was present, the 5<sup>th</sup> of January being a holiday. The Licensee filed their reply to the additional rejoinder on 6.1.2005. Accordingly 12.1.2005 was fixed for arguments.

On 12.1.2005 while the Licensee's Representative Sri Arjun Pratap Singh, A.E.R was present, the Complainant was not present and had sent his written arguments. Sri Arjun Pratap Singh of the Licensee answered in reply that he took over charge of the Sub Division in November 2003 and thereafter in January 2004 he traced out this case and disconnected the Complainant's connection. He was then asked about the action taken prior to the above. Accordingly Licensee was asked to file the reply as to what action had been taken in this direction prior to the above action.

Prior to posting of Sri Arjun Pratap Singh, the officers concerned were said to be Sri Lohari Singh after March 2003, Sri M.N.Gupta A. E. was said to have been before him and Sri C.S.Kalra, A.E was before Sri MN Gupta during the tenure of which officers there seems to have been no action in this case. Accordingly the Licensee was called upon to submit an explanation of the concerned officers for the inaction noted in this case which was to be submitted on 28.1.2005.

On 28.1.2005 only Sri Arjun Pratap Singh, A.E.R, the Licensee's representative was present. He informed that a letter had been sent to the G.M. Garhwal Zone, Sri P.K. Pant for calling the explanation from each of the concerned officers and copies had also been sent to the then Assistant Engineers Sarva Sri Lohari Singh and Sri M.N.Gupta. Sri C.S.Kalra was reported to have retired but a direction was given to the Licensee's representative that an explanation be called from him as well.

Accordingly the next date was fixed for submission of the Licensee's replies to the above on 2.2.2005. The Licensee was also to have submitted proof of publication of the Spot Billing announcements.

On 2.2.2005 Licensee's Representative Sri Arjun Pratap Singh attended but did not submit the replies due from them. The next date 9.2.2005 was accordingly fixed for its submission.

On 9.2.2005 the Licensee's replies were not submitted and 23.2.2005 was fixed for final orders.

The Complainant has filed his representation on grounds, which are not materially different from those filed earlier before the Learned Forum. Moreover the Representation was filed much later than the stipulated date after the Decision was given by the Forum but nevertheless it was taken up for hearing considering the fact that the Redressal Mechanism was a relatively fresh introduction in Uttaranchal.

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The points raised by the Complainant are as under: -

1. That the Complainant's Punjab & Sind Bank Branch, of which he is the Manager is situated on Ghat Road, Rishikesh.
2. That the Punjab & Sind Bank is a Government of India undertaking and its H.O. is situated at Bank House, Rajendra Place, New Delhi.
3. That prior to the period of the dispute the Complainant had been regularly paying the bills.
4. That no prior intimation was sent to the Complainant about the start of the Spot Billing System.
5. And that no bill was sent to the Bank after 28.11.2000.
6. That a consolidated bill was sent on 28.1.2004 amounting to Rs. 94,857.00.
7. The Bank's Zonal Office demanded details and they were intimated as:
  - (a).A sum of Rs. 68,736.95 was the electric consumption charges.
  - (b).And Rs. 26,120.06 was towards Late Payment Surcharge.
8. The Complainant sanctioned the payment of Rs. 68,736.95 but objected to the late payment surcharge as being illegal.
9. However when the S.D.O., UPCL, Rishikesh issued a letter on 25.9.2004 threatening disconnection the amount was deposited by the Complainant under protest on 6.10.04.
- 10.The Complainant has now represented against the decision of the Learned Forum on the following issues: -
  - 10.1 The said Decision of the Forum is not a speaking order.
  - 10.2 That the Decision is not in accordance to Law, facts and merits of the case.
  - 10.3 That no opportunity of hearing was granted to the Complainant before passing the Decision.
  - 10.4 That the principle of Natural Justice has been violated.
  - 10.5 That the decision of 21.7.2004 is without basis and cogent reasons.
  - 10.6 That no intimation regarding letter 3117/UPCL/Consu./G-26 dated 15.6.2004 was given to the Complainant by the Licensee.
  - 10.7 That the surcharge levied is illegal.
  - 10.8 That the Licensee has overlooked the fact that the Bank is also a part and parcel of Government of India.
  - 10.9 That the surcharge levied is highly excessive and arbitrary.
  - 10.10 That the duty of issuing the bill is that of the Licensee.
  - 10.11 That the Licensee did not issue any disconnection notice in the intervening period of 39 months.
  - 10.12 That the Respondent has illegally held the surcharge and it cannot be accepted.
  - 10.13 That the Respondent has not applied its mind.
  - 10.14 That the said order is based on surmises and conjectures.
  - 10.15 That before passing the impugned order it was necessary for the Respondent to award on opportunity of hearing the Complaint and to see the circumstances of the case.

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10.16 That the said order of 21.7.2004 is not in accordance with the law and the surcharge imposed on the Complainant is illegal.

**The points and issues enumerated above are now examined:**

1. The Complainant is the Manager of the Punjab & Sind Bank at Rishikesh and from the account given in the case it appears to be an important branch of the town if not the main branch, in an important and a major tourist center of the State of Uttaranchal. As such he is from all accounts a senior officer of a premier financial institution, which he himself has pointed out is a Govt. of India undertaking.
2. That as per his own admission the Complainant has said the Bank was continuously paying the bills earlier. This means this was accepted as a regular liability on the Bank, which cannot be denied from the above fact.
3. That being a Govt. of India Undertaking imposes a certain financial discipline, and being a Govt. of India Bank only enhances this responsibility of regularly meeting out its obligations and liabilities.
4. The Bank has not cited a single letter or communication sent to the Licensee with regard to not receiving the bills especially in the light of the fact that it was earlier receiving these bills regularly as stated by the Complainant.
5. This implies a studied silence over not paying the electricity bills for a period of more than 3 years (Thirty Nine months as stated by the Complainant.)
6. This means that the Bank was not maintaining an account of its liabilities towards such essential services nor was it keeping a budget provision. This unfortunately is an adverse reflection on the Bank's financial discipline.
7. It could also be open to questioning the Bank's financial rectitude. The complainant has not once stated if it ever crossed his mind that how was it that the Bank was utilizing the electricity day in and day out and month after month but was not paying the bills!
8. With regard to the Complainant's grievance against imposing the Spot Billing System the principle of Natural Justice quoted by the Complainant again demands that had the Bank done a responsible book keeping of its liabilities, it would have made it realize something was remiss and it would have been able to lodge a complaint about non-receipt of the bill. A reasonable time to react was thus three months at the most.
9. As far as the Licensee's compulsions are concerned which compelled it to introduce the Spot Billing System these have been guided by the need for rendering better service to the consumers who would not suffer on account of wrong readings or inability to get meter readings taken if the consumer read his own meter.
10. The undeniable fact is that for any system to perform satisfactorily it requires vigilance from both sides against inadvertent error. A good house-keeper ensures a prudent husbanding of resources. That means a monthly budgeting and accounting of expenditure and liabilities, which the Bank does not seem to have done in this case.
11. The Licensee imposed its Spot Billing System over a wide region and it was not just confined to Rishikesh. The Licensee represented by, the Executive Engineer, Electricity Distribution Division, Rishikesh has gone on oath to declare that sufficiently wide publicity was given to its

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introduction which was accepted by nearly all consumers including Banks.

12. The above cannot be refuted on the strength of one or two complaints. The mode of publicity cited was of mass publicity, which precludes any personal bias of not informing any specific individual.
13. The Complainant cannot therefore claim relief solely on account of any nonperformance of functions by the Licensee, since every consumer had been made aware by the Licensee even before the introduction of the Spot Billing System to contact the Billing Office if the bill had not been received by him and this the Complainant has failed to do so.
14. Had he done so in the first month of non receipt of the bill, or even within a reasonable period thereafter he could be said to have responded responsibly.
15. Coming now to the replies tendered by the Licensee it reveals, to say the least, a chronicle of gross misconduct for around three years by the concerned officers and officials of the Licensee. The case has revealed that the executive level of the Licensee did not observe the directions issued for the proper functioning of the Spot Billing System for all of around three years.
16. That such a breach of observance of its own Rules and Procedures could continue for well over three years also points to failures on the part of the Management System of the Licensee.
17. The Rules and Procedures directed vide UPSEB letter No. 1423-HCC/SC- 4 dated 23.4.99 which were specifically breached are the following:-  
"4 Meter Readings"
  - (i). Meter reading should be checked periodically. With this purpose, meter blanks should be generated every quarterly/Six monthly as is convenient.
  - (ii). In case of variation in the meter reading brought by the consumer/actual it is desirable that the reading brought by consumer, if less, should be got checked by higher authority."
18. The other rules may also have been breached or not observed and could well have caused serious financial repercussions especially with regard to remittance of the money realized which required auditing by the Superintending Engineer (now Deputy General Manager).
19. During the three years no action was taken to trace out the defaulter M/s Punjab & Sind Bank, Ghat Road, Rishikesh either for checking of their readings and payments of outstanding dues or for disconnection on account of non-payment.  
The defaulter was disconnected by Sri Arjun Pratap Singh the present incumbent Assistant Engineer (Revenue) in January 2004.
20. Therefore for the period November 2000 till November 2003, a period of three years the following three officers are prima-facie responsible for non performance of essential duties, and their explanation was sought on this matter.

20.1 Sri C.S.Kalra.

20.2 Sri M.N.Gupta

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20.3 Sri Lohari Singh.

21. No reply was forthcoming which only aggravates the seriousness of the charge against them.
22. Apart from the officers and officials at the immediate implementation and execution level, there is a grave shortcoming at the administrative and higher management level, which appears prima-facie to be totally unconcerned with what is happening at the grass-roots level. The management level succeeding the then Chief General Manager Uttaranchal of the then UPSEB, and later with the formation of the Uttaranchal Power Corporation Ltd. (UPCL) designated as General Manager, Garhwal downwards is thus seen to have prima-facie omitted its functions to supervise and control the subordinates?
23. With the setting up of the UPCL the Management function could only be expected to be better and for this reason the failure at the Management level especially at the level of the General Manager and Deputy G.M. levels, calls for not only preventive action but also improvement.
24. The Complainant has questioned the legality of the Spot Billing System. The Licensee starting from the time of the undivided State of U.P. and the UPSEB had introduced the said system as a corrective. Notwithstanding any thing contained in any order issued subsequently the legality and bona fides of this order are not open to challenge post-facto, especially by a Complainant who held back substantial payments of the Licensee. This ground has therefore no merit.
25. With regard to the imposition of the surcharge and the so called post-facto order No. 3117 dated 15.6.2004 the Complainant has already laid himself open to the consequential penalties further by not responding in time to the fact that he stopped getting the electric bills. He should not have been under any delusions as to the UPCL granting an advantage to him by default of not sending the bills.

#### **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 rejecting his complaint for waiver of the surcharge over delayed payments and non-payments over considerable period of time and after giving due hearings to the Complainant as also the representative of the Licensee, I come to the conclusion that the Licensee is entitled by the relevant provisions of the tariff to charge the late payment surcharge, as the Complainant failed to abide by the instructions of the "Spot Billing System" and failed to react to the fact why his Bank had stopped making regular payments to the Power Company which it was doing regularly earlier and especially so when it was regularly receiving power from the Company. However a relevant set of facts that the individual officers of the Licensee are also found to be deficient in rendering service both to the consumer as well as to the Company which is a public owned Company cannot be ignored.

Accordingly the Complainant's case is seen to have no merit for grant of any relief on the matter of surcharge and the representation is therefore rejected. Individual officers of the

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Licensee cannot be allowed to go scot-free in instances of such gross callousness of dereliction of essential duties and they need to be held accountable for repeated lacunae observed in their functioning.

A Management, which allows revenue dues to lie un-recovered for years on end, as well as turns a Nelson's eye to gross dereliction of duties by its subordinates which fail to trace out defaulters and disconnect them if they still fail to pay their dues, at the level of implementation, cannot be complimented for its performance.

Therefore the Licensee is directed to recover one half of this surcharge from the officers and officials found guilty of lapses in the management and execution levels as a fine for dereliction of their duties in order to set a token of an example for all concerned.

Action taken in this case may be reported to the OMBUDSMAN within a month.

Date :23.02.05

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