

Before the Hon'ble Ombudsman

(Appointed by the Uttaranchal Electricity Regulatory Commission under Section 42(6) of the Electricity Act, 2003)

24 Vasant Vihar, Phase-II,
Dehradun-248006
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Case: Representation No. 11/2005 dated 9.11.2005

Complainant

M/S Kumar Agro Tech Ltd.,
Godarjudda, Manglore,
Roorkee(Uttaranchal)

Vs.

Respondents

1. Chairman & Managing Director
Uttaranchal Power Corpn. Ltd.,
(UPCL) Urja Bhawan,
Dehradun
2. Executive Engineer,
Electricity Distribution Division,
Roorkee (Distt. Haridwar)

Counsel for the Complainant:

The Complainant himself,
Representing M/S Kumar Agro Tech Ltd.,
Godarjudda, Manglore,
Roorkee

Counsel for the Respondents:

Sri S. M. Jain, Advocate
Standing Counsel, UPCL
Dehra Dun.

In the matter of:

A Representation was filed by the Complainant M/S Kumar Agro Tech, 48 Godarjudda, Manglore, (Roorkee) registered on 9.11.2005 as case No. 11/2005, against the decision of the learned Consumers' Grievances Redressal Forum, Garhwal Zone, Dehradun dated 29-09-2005, which had rejected their complaint about the non-refund of the amount of System Loading Charges of Rs. 315800= 00 only by the Licensee (UPCL), despite the existing orders of Hon'ble Uttaranchal Electricity Regulatory Commission (UERC) to do so as these stood realized after 20-09-2003 and before 31-03-2005.

QUORUM

Sri J.C.Pant	...	Ombudsman
Date of Award	...	06 -09-2006

AWARD

The above Representation was received in this office on 9.11.2005 and registered as Representation No. 11/2005.

Accordingly notices were issued to the parties and date for submission of point wise reply by the Respondents was fixed for 23.11.2005.

On 23.11.2005 both parties were present. The Complainant was asked to give rejoinder to the Licensee's contention. The next date for hearing was fixed for 7.12.2005.

On 7.12.2005 heard the Complainant. He had no rejoinder to give. A further date 21.12.2005 was fixed for hearing.

On 21.12.2005 the Licensee was asked to submit a report on the Complainants' Representation. A report had come but it was observed that it would be appropriate if a sworn affidavit was submitted by the Licensee in support of their report. The next date for submission of sworn affidavit and hearing was fixed for 4.1.2006.

On 4.1.2006 both parties were present. Learned counsel of the Licensee had averred that the matter is under active consideration of the U.E.R.C. and that this representation may be stayed till disposal by the U.E.R.C. The learned Counsel of the Licensee promised to submit the affidavit as required by the next date which was fixed for 25.1.2006.

On 25.1.2006 the affidavit was submitted by the learned Counsel of the Licensee and the case was stayed till the decision of U.E.R.C. was conveyed.

The next date was fixed for 29.3.2006 as reply of the Hon'ble Commission had been received. Learned Counsel for the Licensee wanted some time to file a reply to the Representation of the Complainant. Clarification regarding reply from UERC was also called for from Licensee. Accordingly the next date 26.4.2006 was fixed for the Licensee's reply.

No reply could be submitted by the Licensee on 26.4.2006 and accordingly the next date was fixed for 3.5.2006.

The copy of reply received from the Respondents on 3.5.2006 was sent to the Complainant for their response and accordingly the next date was fixed for 17.5.2006 for their reply and also for hearing.

On 17.5.2006 the reply was filed by the Complainant. The respondent had stated that a stay order was issued by the Hon'ble High Court, Nainital in this matter. Accordingly the Respondents were asked to submit a copy of the said stay order as well as a copy of the vacation of the stay if the stay order stood vacated. The next date for the same was fixed for 24.5.2006 as also for its hearing.

On 24.5.2006 the learned Counsel for the Licensee Ms. Shashi Yogeshwar was present and filed a request for adjournment. Enquiries were to be made from UERC

office whether the Licensee's Petition is still pending with them. The next date was fixed for 14.6.2006 in the case.

On 14.6.2006 both parties were present. It was observed that a report be requested from the Secretary of the UERC on the letter dated 14.6.2006 given by the Learned Counsel on behalf of the Licensee. Accordingly a next date 5.7.2006 was fixed.

On 5.7.2006 reply from UERC was still awaited. The next date 12.7.2006 was fixed for next hearing. Both parties were present.

On 12.7.2006 reply was still awaited from UERC. The next date 19.7.2006 was fixed. Both parties were present.

On 19.7.2006 both parties were present. It was observed that reply from the Hon'ble Commission had been received. The Licensee was thus asked to file "A copy of the order of the Hon'ble High Court in Petition No. 281/2005 given on 24.4.2006, the day when the case was listed, may be furnished." The above was an extract of the copy of the enclosure to the letter of the UERC No. 328/UERC/06/SLC dated 17.7.2006 as per their Para 3 of its enclosure. The Licensee was thus asked to file a copy of this order of the Hon'ble High Court dated 24.4.2006. The next date was fixed for 2.8.2006.

The above date was changed to 16.8.2006 for hearing.

The date had to be changed again to 23.8.2006 due to Janmashtami holiday. On 23.8.2006 it was observed that License had so far not submitted a copy of the Hon'ble High Court Order (if there was such an order). Accordingly 6.9.2006 was fixed for orders.

Facts & Circumstances of the case:

1. The Complainant had filed this Representation against the order of the Consumers' Grievances Redressal Forum, Garhwal Zone, 120-Haridwar Road, Dehra Dun which had dismissed their complaint No. 77.
2. The Complainant had earlier filed their aforesaid complaint in the Forum against the Licensee seeking refund of the amount of Rs, 3,15,800.00 deposited by them as System Loading Charges against the Licensee's initial demand of Rs. 6,24,000.00. These had been deposited as under:
 - i. Rs. 1,04 000.00 on 10-03-2004
 - ii. Rs. 1,11.800.00 on 12-04-2004
 - iii. Rs. 1,00,000.00 on 29-03-2005Total Rs. 3, 15, 800.00
3. The Complainant's grievance had been that the above amount was realized by the Licensee in violation of the Tariff Order of the UERC dated 08.09.2003, Para 8.2.4.4.,page 176, which inter-alia said:
"No System Loading Charges will be payable".

4. That further more UERC in its next Tariff Order of 25.4.2005 Para 7.2.3 Page 114 had again reiterated its earlier order of 8.9.2003 and thus further qualified it as follows: -

“7.2.3 System Loading Charges

System loading charges were being levied on all categories of consumers at the time of sanction of every new connection for covering the capital costs for up-gradation and strengthening of the system. Levy of such system loading charges was disallowed in the Order dated 08.09.2003, which was clearly stated at the following places in the Order:

- i) *At the end of Rate Schedule for each category of consumers: “Apart from the above and those included in the rate schedule of miscellaneous charges, no other charges shall be charged from the consumer unless approved by the Commission”.*
- ii) *In Para 8.2.2.4, which specifically stated that for industrial consumers “No system loading charge will be payable”.*

While seeking to reintroduce these charges, the licensee has failed to provide any data or argument to support such reintroduction. The Commission, therefore, does not see any reason or justification for reintroducing such charges and takes this opportunity to make it absolutely clear that no such charges are to be levied on new consumers of any category at the time of giving a new connection.

*During the Public Hearings, some consumers had alleged that notwithstanding Commission’s categorical directions contained in the tariff order and referred to above, the licensee has continued to levy such charges on new consumers. If these allegations are true, then the licensee is clearly guilty of willfully defying Commission’s orders and recovering unauthorized charges from such consumers. In doing so, the licensee is not only exposing itself to punitive legal action, but is required by section 62(6) of the Electricity Act, 2003 to refund such unauthorized/excess amount to the concerned consumer along with interest at bank rate. **The licensee is hereby required to file full and correct facts with the mission within a month of this order, where after the Commission will take view on this alleged violation.** This, of course, will not in any way come in the way of any aggrieved consumer seeking appropriate relief from the Redressal Forum or any other court.”*

5. The Complainant had cited the above Orders in support of its demand to the Learned Forum filed on 25-07-2005 to refund the amount of System Loading Charges that had been realized by the Licensee (Rs. 3 15,800.00) despite existing orders of the UERC that “*No System Loading Charges will be payable.*”, as also the subsequent orders in the next Tariff Order of 25-04-2005 vide Para No 7.2.3 quoted above to refund the same.
6. The above was thus the contention of the Complainant’s complaint before the Learned Forum filed on 25.7.2005.

7. The learned Forum dismissed the above Complaint on 29.9.2005 with the speaking order observing as follows:-

“The Complainant have put up their case for refund of System Loading Charges in respect of their 500 KVA load released on 11.3.2004. In view of the tariff orders approved by the Uttaranchal Electricity Regularity Commission, the plea put up by the Complainant is not acceptable and therefore the System Loading Charges deposited by the consumer in the year 2004 cannot be refunded as the system loading charges have been waived off w.e.f. 1.4.2005.”

Issue/issues in the case:

1. The issue thus arises whether the Licensee had flouted clear cut orders of the Hon'ble Commission dated 8.9.2003 effective from 20.9.2003 that System Loading Charges will not be payable when it continued to levy system loading charges on the Complainant vides its O.M. 2114/Vi.Vi.Kha.Roo(Ra)Kumar Agro dated 10.3.2004. It may be recalled the UERC as per its above order had directed *“No system Loading Charge will be payable”* and at the end of its RTS-7 Tariff Schedule for L.T. & H.T. Industry Para 17 under the heading *“Note”* had again directed *“Apart from the above and those included in the schedule of miscellaneous charges, no other charges shall be charged from the consumer unless approved by the Commission.”*
2. Then again the UERC had in the next Tariff effective from 1.4.2005 referred to its earlier orders on 8.9.2003 as per Para 7.2.3 on Page 114 quoted earlier in full and had gone on to say that *“During the Public Hearings, some consumers had alleged that notwithstanding Commission's categorical directions contained in the tariff order and referred to above, the licensee has continued to levy such charges on new consumers. If these allegations are true, then the licensee is clearly guilty of willfully defying Commission's orders and recovering unauthorized charges from such consumers. In doing so, the licensee is not only exposing itself to punitive legal action, but is required by section 62(6) of the Electricity Act, 2003 to refund such unauthorized/excess amount to the concerned consumer along with interest at bank rate.”*

The Licensee in continuation of above had been directed, ***“The licensee is hereby required to file full and correct facts with the Commission within a month of this order, where after the Commission will take view on this alleged violation. This, of course, will not in any way come in the way of any aggrieved consumer seeking appropriate relief from the Redressal Forum or any other court.”***

3. The above therefore constitutes the issue whether the Licensee has flouted the orders of the Hon'ble Commission or not in not refunding the concerned amount of Rs. 315800=00 that were realized after the Commission had said these were not payable by the consumers?

Examination of the facts, circumstance and issues

1. The Complainant had cited above orders of the Hon'ble Commission, which are clear in themselves that any charging of the System Loading Charges (SLC) by the Licensee even after issue of the said order on 8.9.2003 shall constitute a willful violation of the Commissions' authority making the Licensee liable for punitive action.
2. The said S.L.Cs were realized in this case between 10.3.2004 to 29-03-2005 although the UERC's orders were already effective upon the Licensee w.e.f. 20.9.2003.
3. The learned Forum while delivering its order on 29.9.2005 long after the above said orders of the Hon'ble Commission had been issued and had become public, made this observation ".....therefore the system loading charges deposited by the consumer in the year 2004 can not be refunded as the system loading charges have been waived off w.e.f. 1.4.2005."

This thus purports to say that the said SLC have been waived off only w.e.f. 1.4.2005 and not earlier, which is factually incorrect or a mis-representation.

An insight into the above way of the Licensee's thinking appears necessary. It appears to think that the matter of refund of the amount of SLC realized despite the UERC's orders on 8.9.2003 is still open to representation before the Hon'ble Commission as is borne out by the Commission's observation, "*While seeking to reintroduce these charges, the licensee has failed to provide any data or argument to support such reintroduction. The Commission, therefore, does not see any reason or justification for reintroducing such charges and takes this opportunity to make it absolutely clear that no such charges are to be levied on new consumers of any category at the time of giving a new connection.*" (Excerpt from its Para 7.2.3 on Page 114 of its Tariff order dated 25-04-2005)

4. However a reading of the Para 7.2.3 on Page 114 of the UERC's order not only rejects the Licensee's stand, on the contrary it clearly directs it to refund the amount of unauthorized System Loading Charges recovered by it giving due interest as per Section 62(6) of the Electricity Act 2003. The Commission also observes that by holding on to such unauthorized collection of charges the Licensee is "exposing itself to punitive action". That should have left it in no doubt that such a collection of S. L. Charges and holding on to such charges even after the UERC's clear orders was making itself liable to punitive action but it continued to think it was still a contentious issue.
5. That being so the Licensee's contention that a final order on the matter of refunding SLC was still pending before the Hon'ble Commission was referred to them vide this office letter No. 113/Omudsman/11/2005 dated 8.12.2005.
6. The Licensee reiterated its above averment vide its Affidavit dated 25.1.2006 that the above matter of refunding S.L.Cs was still pending before the UERC and that further decision by the Ombudsman be kept pending till the matter stood disposed off by the UERC.

7. The Hon'ble Commission vide its order dated 21.2.2006 disposed off the above contention of the Licensee and informed it had rejected the same as was communicated by the Secretary, UERC vide his endorsement No. 812/UERC/06 dated 21.2.2006. The above order of the Commission clearly states that Licensee's representations had been dealt with and disposed off in Para 7.2.3 of the tariff order dated 25.4.2005. And further that any such charges realized earlier shall be refunded to the consumers with interest under Section 62(6) of the Electricity Act 2003 as per bank rates.
8. The Hon'ble Commission further held that the Licensee's non compliance of the order of the Consumers' Grievances Redressal Forum, Kumaon Zone, Haldwani dated 14/17.12.2005 ordering refund of such S.L. Charges constituted a prima-facie violation of the Commission's Tariff Order (dated 8.9.2003) and accordingly the Commission gave notice to the Licensee as per its above referred order to show cause within 30 days why action should not be initiated against it under Section 146 read with Section 149 of the Electricity Act 2003.
9. The Licensee again contested the above order vide its reply No. 503/UPCL/UERC/SLC dated 23.3.2006 and further averred that the orders of the Forum of Kumaon Zone have been challenged by the Licensee in the Hon'ble High Court at Nainital.
10. It was thereafter averred by the Licensee on 4.5.2006 that the said order of the Forum had been stayed by the Hon'ble High Court.
11. The Licensee was then again asked on 24.5.2006 to file a copy of the said stay order of the Hon'ble High Court.
12. The learned counsel of the Licensee vide his averment dated 14.6.2006 further stated that the matter regarding S.L.C. was still pending before the Hon'ble Commission despite the latter's orders to the contrary of 21.2.2006. This was thus referred to the UERC vide this office No. 46/Ombudsman/Rep. No. 11/05 dated 23.6.2006.
13. The Hon'ble Commission vide their reply 328/UERC/06/SLC dated 17.7.2006 reiterated that they had already dealt with the matter in their letter No. 130/UERC/SLC/06 dated 11.5.2006.
14. The matter thus rested on, what stood contained in the Hon'ble High Courts' order in petition No. 281/2005 given on 24.4.2005, the day when the case was listed, which was thus required to be furnished by the Licensee.
15. This had long since been awaited from the Licensee to produce the said order of the Hon'ble High Court in order to clarify matters having been repeatedly asked to furnish a copy of the said stay order of the Hon'ble High Court.

16. The Licensee had thus been served notices to produce the said order vide the following besides also being asked to do so during the course of hearings:-
- i) No. 31/Ombudsman/Rep.11/05 dated 17.5.2006.
 - ii) The same was again asked for on 24.5.2006.
 - iii) No. 62/Ombudsman/Rep. 11/05 dated 21.7.2006.
 - iv) No. 68/Ombudsman/Rep. 11/05 dated 2.8.2006
 - v). No. 77/Ombudsman/Rep. 11/05 dated 23.8.2006
17. There is thus no valid reason left to extend the proceedings further as the Licensee has failed to submit the above said stay order if at all there is any such order.
18. The Hon'ble UERC has in its latest order left no doubt in the mind of any one concerned in the matter that any S.L.C. realized from consumers between 20.9.2003 and 31.3.2005 by the Licensee are in violation of its orders contained in its Tariff order 8.9.2003 and this stands reiterated in its Tariff Order of 25.4.2005 as well.
19. The Complainant had deposited three installments of the aforesaid S.L.C. amounting to Rs. 3, 15,800.00 between 10.3.2004 and 29.3.2005.
20. Accordingly in the light of clear orders of the Hon'ble Commission the learned Consumer's Grievances Redressal Forum, Garhwal Zone, Dehra Dun has erred in rejecting the Complainant's plea for refunding of the above said amount of System Loading Charge amounting to Rs. 3, 15,800.00 and these shall thus stand to be refunded to them along with interest payable at bank rate as per Section 62(6) of The Electricity Act 2003, the same to be paid to the Complainant till the date of refund, which shall thus not be later than fifteen days from the date of this Award.
21. The above Forum in issuing its order dated 29-09-2005 has clearly violated the Tariff Orders promulgated by the Hon'ble Uttaranchal Electricity Regulatory Commission and these are thus set aside being null and void.
22. The matter has taken longer than the stipulated period as it involved references to allegations of pending petitions before the Hon'ble Commission concerning refund of the System Loading Charges made by the Licensee. These however turned out not to be pending before the Commission. This is thus put on record as the extended period has arisen in the course of proceedings in this case as enumerated in the aforesaid Paras.
23. The matter of violating the standing orders of the Hon'ble Commission by the Licensee is however referred to the UERC to take such punitive action as they may deem fit in reference to their latest order dated 130 / UERC/ SLC/ 06 Dated 11-05-2006 referred to this office vides their No. 328/UERC/06/SLC Dated 17-07-2006.

Award

Having diligently considered and examined all the facts and circumstances of this Representation and after giving due hearings to both parties and having heard arguments from both sides, I come to the conclusion that the decision given by the learned Consumers' Grievances Redressal Forum, Garhwal Zone, Dehra Dun in rejecting the Complainant's demand for refund of Rupees Three Lacs Fifteen Thousand and Eight Hundred only (Rs. 315800=00), has clearly flouted the authority of the Hon'ble Uttaranchal Electricity Commission that had issued clear cut directions to the Licensee that the System Loading Charges are no longer payable vide its Tariff Order of 08-09-2003 effective from 20-09-2003 and that furthermore vides its Tariff Order of 25-04-2005 it had not only reiterated its earlier order that such charges should not have been charged but that if realized despite the Commission's Orders between 20-09-2003 and 31-03-2005, these shall stand to be refunded to the concerned consumer along with due interest payable as per Section 62(6) of The Electricity Act 2003 at bank rate.

Hence the order of the aforesaid Consumers' Grievances Redressal Forum Garhwal Zone, Dehra Dun is set aside, being null and void and thus the Licensee is directed to refund the above said amount to the Complainant along with interest at bank rate as per Section 62 (6) of The Electricity Act 2003 payable up to the date of refund, which shall in no case be later than fifteen days from the date of this Award.

Some action is clearly indicated against the Licensee for flouting the authority of the Hon'ble Uttaranchal Regulatory Commission in this matter. This is thus referred to the UERC to take such punitive action as they may deem fit in particular reference to their latest order dated 130 / UERC/ SLC/ 06 Dated 11-05-2006 referred by them to this office vides their No. 328/UERC/06/SLC Dated 17-07-2006.

The compliance of this Award by the Licensee is to be duly reported by 27 - 09 -2006.

Dated 06-09-2006

(J. C. Pant)
Ombudsman