

Before the Ombudsman

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

24, VASANT VIHAR, PHASE-II,

Phone - (0135) 2762120

DEHRADUN-248006

Case: Representation No. 5/2006 dated 24.05.2006

Complainant

M/S Sant Steel and Alloys (P) Ltd.,
Jasodharpur Industrial Area, Vs.
Kotdwar (Distt. Pauri Garhwal)

Counsel for the Complainant:

Sri M. K. Kohli,
Advocate,
Counsel for Complainant

Respondents

1. Uttarakhand Power Corpn. Ltd.(UPCL),
through its C.M.D.
2. Executive Engineer,
Electricity Distribution Division,
Uttarakhand Power Corp. Ltd.
Kotdwar.

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 Sant Steel and Alloys (P) Ltd., Jasodharpur Industrial Area, Kotdwar) on dated 22.5.06 against the Order dated 3rd May 2006 passed by the learned Consumers' Grievances Redressal Forum, Garhwal Zone, Dehradun in Complaint Case No. 49 of 2005 M/S Sant Steel and Alloys (P) Ltd., Versus Chairman, Uttarakhand Power Corporation Ltd. (UPCL) in which it had dismissed the Complaint holding it that it was not maintainable. The Complaint was over an assessment bill for Rs 9,03,005.25 raised by the UPCL against the Complainant for alleged use of power without metering during a period of shut-down of the feeder and then after that, when the P.T of the Complainant's connection had burst.

QUORUM

Sri J.C.Pant	...	Ombudsman.
Date of Award	...	28.02.2007

AWARD

The above Representation was received in this office on 24.5.06 and registered as Representation No. 5/2006. Accordingly notices were issued to the parties on 25-05-'06 fixing the date of 21-06-'06 for submission of the point wise reply by the Respondents.

On 21.6.2006 the copy of the reply received from the Licensee was given to the Complainant for counter reply and the next date was fixed for 12.7.2006.

On 12.7.2006 the response from the Complainant was not received and accordingly the next date 19.7.2006 was fixed for it.

On 19.7.2006 the learned counsels of both the parties Sri SM Jain for the Licensee and Sri Manoj Kumar for the Complainant were present and the counter reply was submitted by the Complainant copy of which was given to the counsel of the Licensee for further reply. The next date was fixed for 9.8.2006 for response of the Licensee. However on 1.8.2006 a next date had to be fixed for 23.8.2006.

On 23.8.2006 information called for from the Licensee was still not received. The further date 30.8.2006 was fixed.

On 30.8.2006 the date 20.9.2006 was fixed for hearing.

On 20.9.2006 the date 27.9.2006 was fixed for orders which were postponed for 18.10.2006. It was observed that written arguments may be given within a week.

On 18.10.2006 in response to Licensee's action to submit part of some crucial information which they had not sent earlier and their seeking some more time to submit the rest, as also to allow the counsel for Complainant to file photocopies of the original letters to authenticate the translated letters referred in his Representation, the next date 1.11.2006 was fixed for orders.

On 1.11.06 learned counsel for the Licensee had pressed that some fresh facts have been brought before the Ombudsman and that the Licensee may be given more time for responding to these facts. Accordingly 15.11.06 was fixed for further arguments.

On 15.11.06 the counsel for the Complainant had given reply. Accordingly 29.11.06 was fixed for arguments.

On 29.11.06 the learned counsel for Complainant had sought an adjournment. Accordingly 20.12.06 was fixed for arguments.

On 20.12.06 written arguments were filed by both the parties. It was ordered that oral arguments shall be heard on 10.01.07.

On 10.1.07 counsel for the Complainant was asked to submit certified copy of the complaint made before the State Commission and 31.01.07 was therefore fixed for submission of the same as also for arguments.

On 31.01.07 required information regarding "limitation" was given. The next date 28.02.07 was fixed for orders. On 28.02.07 the said orders were given that the contention of the learned counsel for the Licensee that the original complaint made by the Complainant (Representationist) was time barred did not appear to be tenable. It was further ordered that on going through the merits of the case it was clear that the assessment bill in question was raised for a period when the factory was not being supplied power due to shut down of the feeder and then due to break down of the P.T. Therefore, the assessment bill was not in order and was to be withdrawn. The order dated 03.05.06 of the Consumers' Grievance Redressal Forum, Garhwal Zone, Dehradun was, therefore, set aside and orders were given that detailed Award shall follow in due course.

Facts and circumstances of the case

1. Some of the facts had already been stated in detail by the learned Consumers' Grievances Redressal Forum. However, additional facts were necessary to be collected but the Respondents (Licensee) unduly delayed submission of vital information specifically asked for in this case thereby tending to flout the Regulation No. 4 of 14-05-2004 which empowers the Ombudsman under Para 7 to call for such information. It belatedly sent the information but it

unduly delayed the case. However, the information supplied vide its letter No. 4421 / EDDK dated 20.10.2006 and 4337 etc. dated 13.10.2006 materially altered the entire direction of the case as shall be brought out further. These facts are stated as under.

2. The Circuit Breaker (CB) No. 4 controls the independently fed feeder emanating from 132 kV Substation Kotdwar, which supplies power to the Complainant's induction-furnace load of 1800 kVA alongwith some other consumers of the same process.
3. A shut-down was ordered by the E.E Electricity Distribution Division Kotdwar on 24-08-2000 of the above said independent feeder alongwith that of independent feeder from CB No. 7 in order to disconnect the Complainant and other consumers for non-payment of dues as per entry in the Log Sheet of the 132 kV Substation, Kotdwar.
4. **According to the Log Sheet of the above Sub Station for the month of August 2000 the following entries are recorded in the Log Sheet for 24.8.2000 under the heading of "Operations" which show the following remarks of the Executive Engineer, Electricity Distribution Division, Kotdwar:-**

Date 24-08-2000

Time 19:10 - "S.S.O. on duty

Pl. open OCB 4 & 7 And (illegible) Sh. Pant JE will take Shut down for opening jumpers of the consumers who has not made payments.

*Sd/- **
24.8.2000
E.E. E.D.D. (illegible)"*

***Signatures on the above Log Sheet as also on the meter reading slip of the Complainant's connection for the meter reading of 24.8.2000 show that these are of the same Executive Engineer, Electricity Distribution Division, Kotdwar who had issued the assessment bill.**

Further entries in the Log Sheet for operations on CB No. 4 on 24-08-2000 are as follows:-

Time 19:12 "33 kV CB No.4 & 7 opened as per order of the E.E.E.D.D., KDR"

Time 19:15 "S/Dn. of CB No. 4 & 7 issued to Sri J.C.Pant
JE (D) Kotdwar for opening of jumpers of consumers for disconnections".

Sd/- illegible

"Pl.open Isolators of Feeder No. 4 & 7 to open jumpers of defaulter Industries"

5. **The details of operations on CB No. 4 as per Log sheet of 30.8.2000 are as under:**

12:10 *Kindly open isolators of Feeder No. 4 to open Jumpers of defaulter and to connect Rana Steel (Paid)*

12:15 "33 KV CB No. 4 Line and Bus Isolators opened."

Sd/- illegible

13:00 "Kindly return S/D of Feeder No. 4 opened jumper of Kukreti, HRJ, Aruna & Puskar."

Sd/- illegible

13:10 "33 K.V. CB No. 4 Line and Bus Isolator closed."

13:12 "33 K.V. CB No. 4 closed. But did not hold Tripped at once on E/F 50 and O/C 50."

per entry of 14:45 hrs. When the supplies to CB No. 4 and the feeder were resumed at 14:51 hrs on 30-08-2000, the supplies to M/s Sant Steel had been disconnected as its jumpers had been "opened". The supplies to the Complainant were only resumed as per the Log Sheet at 21:59 hrs of 2-09-2000.

The fact of the break down on the CB No. 4 on 30-08-2000 at 13:12 hrs and removal of connections of Sant Steel to restore the supplies to the rest of the feeder at 14:51 hrs on 30-08-2000 are significant. Similarly on 2-09-2000 the reconnection of Sant Steel on to the feeder supplied by CB No. 4 at 21:59 hrs is significant to the case.

8. Now the dispute is over the assessment bill for Rs. 9,03,005.25 which the Executive Engineer had issued based allegedly on the directions of the Internal Audit. This latter information which is of vital importance was belatedly conveyed vide Licensee's letter No. 4337/EDDK/5/2006 dated 13.10.2006. The Internal Audit observations quote the Meter Sealing Certificates 1512 of 30.8.200 and 1513 dated 2.9.2000 that have been filed as part of averments both by the Complainant and the Licensee and are thus part of the record so there is no need to reproduce them here.
9. The full text of the Internal Audits' observations are also part of the Licensee's record so these are not being reproduced – only the relevant portion is being quoted as follows:-

Bfi Nyk fcy 24-8-2000 rd fuxZ fd;k Fk A eVj dsvuqkj 24-8-2000 I s2-9-2000 rd fo |q mi ; k fuEu i zlkj Fk &

2-9-2000	634566 **
24.8.2000	<u>634496</u>
				70
		<u>xqkd</u>		30
				<u>2100</u>

Li 'V gSd eVj esfnukd 24-8-2000 I sn- 2-9-2000 rd fo |q mi Hks I gh i zlkj fjdM Zugh gksi k; k A vr% fnukd 2-9-2000 I sn- 28-9-2000 rd dsfo |q mi Hks dsvkWkj ij jktLo fu/WZ k fd; k tkuk vi qkr Fk AP

** Note: Audit has wrongly quoted units as 634566 as these are actually 634556, which work out to 1800 units and not 2100 units.

10. In reply the Licensee informed the Internal Audit as follows:-

BLk k dksvoxr djuk gSd [k.M }kjk mi Hksrk eS I Ur LVhy ij 239175 ; fuV dk fu/WZ k : (9]03]005-25 dj chtd tkjh fd; k x; k AP

11. What the Licensee had done in order to raise the above impugned bill was to work out an average consumption of past 89 days (May, June, July and upto 24.8.2000) @ 26775 units/day and applied it for 9 days less the 1800 units recorded in the meter. This worked out to 26775 x 9 – 1800 = 240975-1800 = 239175 units. These 9 days were from 24-08-'00 to 2.9.2000.
12. The above assessment bill amounting to Rs. 9,03,005.25 was sent to the Complainant vide Executive Engineer, Electricity Distribution Division, Kotdwar letter No. 753 / EDDK / PF dated 20.3.2001 which is being reproduced below:

Bvki dksvoxr djluk gSfd elg 8 ,oa 9@2000 esfnukd 30-08-2000 dksvki dsl a ksu dh i hEVHE tyusdsdkj .k Mk; jBV fo | q vki frvZdj nh xbZfhj elg 9@2000 dscy 24-8-2000 I 28-9-2000%es fnE 24-8-2000 I snE 2-9-2000 dsl e; dk fu/kZk fd; k tluk Flk A

vr% mDr fd; sx; sde fu/kZk dk chtd vki dksbl vujsk I sl yXu dj i Bkr gSfd vki fu/kZk r ns frfK rd ml dk Hkrku djusdk d"V djsA

gE %kjEdEfi ?k/2
vf/k"kl h vfhk; Urk

I yXud% fcy

It is significant that the said 'direct connection' was allegedly made on 30.08.2000 (i.e. for period 30.08.2000 till 02.09.2000) but the assessment was made right from 24.08.2000 itself i.e. had been pre-dated when the feeder was under a shut-down from 24.08.2000 till 30.08.2000.

- 13. The Complainant had after the service of the above bill disputed the entire bill vides his letter of 29.3.2001 alongwith, three copies of annexures, excerpted as follows:-

fnukd 29-3-2001

I ek ejs

Jhelu vf/k"kl h vfhk; Urk
fo | q forj.k [k.M]
dks}kjA

egls;]

fuosu gSfd vki ds}kjk Hksk x; k 24-8-2000 I s02-9-2000 rd dk Assessment bill i Bkr gqk tksd I jkl j xyr o xS dkuuh rFk fujk/kj gS ft I I si fkhZdkscgq ekufi d vk?kr i gpk gS bl dsfy, U; 10 esvyx I soln nk; j fd; k tk; sA
; | fi i fkhZdk dksZdirect duB"u ughafd; k x; kA
; | ki 24-8-2000 dks lfgd Non-payment esdisconnection fd; sx; sfst Sk fd 1.32 log-book I sHh Li 'V gS
; | fi 30-8-2000 dks fo | q I a ksu i qLFWi r fd; x; s duB"ku yxkrsgH i fkhZdkscubical box escgq tkjs dh vlokT gbZ fo | q vki frvZdj r cn glsx; h ft I dh I puk i fkhZdkscRdky Qks i j nh rFk I fK gh i fkhZk i = Hh fn; kA bl ij tEQj [k; fn; sx; s rFk pB; j [k; dj nS k x; k rksB-phase dh P.T ij flash FWA rRi "pkr 31 o 1 dks i fkhZdk bdkbZcn jgh rFk 02-9-2000 dks P.T yxkusdscln gh bdkbZpkyvgt I dh sealing certificates I [; k 1512 [k; usdks 1513 yxkusdk gS bl rjg vki ds}kjk fuxZ direct connection vk/kj ij Assessment Bill No. fn0 I fgr ds 000 349 i vZi I sUjLr gks; kS; gS vr% i fkhZk gSfd bl sUjLr Qjekusdh dik djs /W; oln] i fkhZ

sd/- illegible
MkjBVj

1- Qksrhulsdh I yXu gS

In the above the Complainant had made a complete refutation of the assessment and cited the log book of the 132 kv sub station and the above two Meter Sealing Certificates No. 1512 dated 30.8.2000 and No. 1513 dated 2.9.2000 as proof of there being no direct supply and therefore the assessment was to be withdrawn totally. There was no averment of Licensee's reply to it.

14. Thereafter the Complainant had followed it up by sending a much stronger protest letter of 18.6.2001 copies of which he had also given to the D.G.M., Srinagar, the G.M., Dehra Dun and the Energy Minister, excerpted as follows:-

fnukd 18-6-2001

I sk ejs

Jheku vf/k'kl h vflk; Urk
fo | q forj.k [k.M]
dkk}kj x<oky

egks;]

fuosu gSd vki ds}kjk Hksk x;k 24-8-2000 I s02-9-2000 rd dk Assessment bill Hksk x;k tksfd xyr o fujk/kj Fk ftl dksfujLr djusdsfy, geusfnukd 29-03-2001 dksfyf[ir fuosu fd;k Fk vls dbZckj ekid : Ik I sMh fuosu fd;k Fk ijUrq/Hh rd i HkZdk mDr fcy fujLr ughafd;k x;k; kA
vr% i HkZfuosu djrk gSd i HkZdsfcy dksYnh I stYnh fujLr djusdh dik djs elpZ svkt rd genuine dk; Zdk fulRkj.k D; kughafd;k x;k; kA eah th I sMh dgk tk; sMh /W; oln i HkZ

sd/- illegible
MkjBVj

i rfyfi & dk; kZ; egk i zU/kd
mRrjlpoy i koj dkj i kssu
x<oky {s&120} gfj }kj jMh
ngjlnw

i rfyfi & mi egk i zU/kd
fo | q forj.k [k.M]
Jhuxj }x<oky½

i rfyfi & eku0 AtkZeah
mRrjlpoy I jdkj

15. It so appears that when the Complainant pressed his case strongly as above the Executive Engineer, Electricity Distribution Division, Kotdwar vide his letter No. 2805 dated 31.8.2001 committed himself to making an enquiry as under:-

vki dsi = I E "Wv fnukd 18-6-2001 dsl Ecu/k es I for djuk gS fd vki dsl a ksu ds fo:) vUrfd I Ei sk ds}kjk i rkrfor fnukd 24-8-2000 I s2-9-2000 rd dsjktLo fcy ij vki dsi trosu dsv/k/kj ij mfpr tkpVdj dk; zgh dh tk jgh gSI"

Sd/- etc."

16. With regard to the above enquiry the Licensee had made no averment as to what was revealed in it or whether an enquiry was ever made.

Issues:

17. The learned counsel of the Respondents (Licensee) had admitted "Regarding Para 5 it is admitted that the unit of the Complainant remained closed from 24.8.2000 at 19:15 Hrs. up to 30.8.2000 at 13:00 Hrs. only and after that the Complainant enjoyed direct supply up to 2.9.2000 when his damaged P.T. was replaced" – as per averment of Licensee Para 2 dated 21.6.2006.

18. So even if the Licensee's above allegation, about enjoying direct supply from 30.8.2000 to 2.9.2000 is correct is it entitled to charge Rs. 9, 03,005.25 calculated for 9 days i.e. from 24.8.2000 to 2.9.2000?
19. There are grave ramifications of the Licensee's contention that the Complainant had used direct supply from the very date of the shut down i.e. 24.8.2000 but instead of examining them it sought to treat the matter as being closed, leaving the matter of alleged illegal abstraction of supply / theft unresolved.
20. Then again the Licensee said nothing about the Complainant's letters of protest which were issued not only to the Licensee's Executive Engineer but also to the Deputy GM and the GM, the latter also being the head of the Zonal Appellate Committees so was the Licensee justified to disregard them in the light of the discrepancies and contradictions apparent in the case? Were not the above letters adequate to establish the protest and grievance of the Complainant?
21. As per learned counsel of the Respondent's averment Para 18 dated 21.6.2006 the Licensee sought only to make "the order of assessment final and binding on the consumer and cannot be challenged as it has attained finality after expiry of the period of filing the appeal which is both contractual and statutory" – but as stated neither said anything about the Complainant's letters of protests as above nor of the Licensee's commitment of making an enquiry.
22. So shall it be a healthy precedent for the Ombudsman and the Grievance Redressal Mechanism constituted under the Act '03 to sweep a contentious issue under the carpet of legalese such as in this case in which the Licensee had made an averment of shutting off electric supplies of the Complainant on one hand and had then issued a bill claiming it used "direct supply" that being a case of blatant theft of power? If that were indeed so it became a case for the Special Courts under Sections 153 to 157, that have been specially constituted to try cases under Sections 135(1), 149, 150 etc. So was it not necessary to go into the merits of the case?
23. In the present case when the Complainant pressed his case strongly the Executive Engineer, Electricity Distribution Division, Kotdwar vide his letter No. 2805 dated 31.8.2001 committed himself as under:-

^vki dsi = I (E "Wj fnukd 18-6-2001 dsl ECU/k es I fpr djuk gSfd vki dsl a ksu ds
fo:) vUrfjd I Ei fuk ds}jkk i zrkfor fnukd 24-8-2000 I s2-9-2000 rd dsjktLo fcy ij
vki dsi frosu ds v/kj ij mpr tk vDj dk; zgh dh tk jgh gSI*

Sd/- etc.

That being the case it becomes all the more necessary to examine what was the outcome of this enquiry if at all it was conducted and what was the evidence upon which the assessment bill of Rs. 9, 03,005.25 was raised? It cannot again be a healthy precedent if the ramifications of the case in the light of this were not examined on merits.

Addressing the Issues and Examining the Facts and Circumstances:

24. Coming now to the learned counsel of the Respondent's contention that the above bill was not challenged in the Licensee's Appellate Committee by the Complainant so that made it final and binding, is to ignore the evidence of the Complainant's strong protest letters that were repeatedly made to all three competent level officers namely the E.E., the S.E. and the G.M as stated under Paras 13 and 14 that questioned the very basis of the assessment bill alongwith evidence and resolutely protested against it.
25. The learned Forum as also the learned counsel for Respondents have ignored the above protest letters, although the learned counsel for Complainant drew their attention to them. The letters of protest are by themselves sufficient to refute the Respondents' contention that the matter was

time barred. The Complainant's letters stand acknowledged so it was for the Licensee to not only respond to them but also to make a timely redress of the grievance.

26. The Licensee had in fact responded vide E.E. E.D.D. Kotdwar's letter No. 2805 dated 31-08-2001 as per Paras 15 and 23 but there is no averment as to what was the outcome of the enquiry conducted by the said E.E.
27. What therefore stands established is that there was an admitted ground for an enquiry into the issue of the assessment bill which also laid open the fact that it was indeed a disputed case and was duly acknowledged as such by the Licensee. The case in question was open to action by the Licensee and could not be barred by any law of limitation.
28. There was thus no need to delve deeply into the existing jurisprudence governing the laws on "Limitation" as the learned counsel for the Respondents had done and which had also been responded to by the learned Forum but instead there was a need to enquire into the facts as has now been done by us.
29. It is clear from the facts that the learned counsel for the Respondents had gone so far as to admit "...that the unit of the Complainant remained closed from 24.8.2000 at 19:15 hrs upto 30.8.2000 at 13:00 hrs only and after that the Complainant enjoyed direct supply up to 2-9-2000 when his damaged P.T. was replaced.", (as per Para 17) thus limiting the dispute to a much reduced period, i.e., from the afternoon of 30.08.2000 to the evening of 02.09.2000. But then he failed to acknowledge the fact that the Licensee's Executive Engineer had issued an assessment bill for consumption for nine days in all i.e. right from 24.8.2000 to 2.9.2000 (as per Paras 10, 11 & 12), i.e., even for the earlier period the learned counsel had averred that it was under "shut-down".
30. So either the averments being made were without examining the correctness of the facts or there was an attempt to deliberately mislead this Office.

It even escaped notice of the counsel for Respondents as also of the Forum to examine the contents of the Executive Engineer's letter No. 753 dated 20.3.2001 vide which he had sent the assessment bill as per the Para 12. The said E. E. had issued an incredible letter to the Complainant. What was written was quite incredible; it was alleged that the supply to the Complainant's connection had been made "direct" due to burning of P.T on 30-08-2000 but the assessment was being done from 24.8.2000 itself, i.e. a pre-dated period! This was being asserted by the concerned E.E when in fact he had himself gone to the 132 kV substation Kotdwar to record instructions on the Log Sheet to the S.S.O. on duty on 24-08-'00 to order a shut-down, as follows: "*Pl. open OCB 4 & 7 And (illegible) Sh. Pant JE will take Shut down for opening jumpers of the consumers who has not made payments.*"

Sd/- **
24.8.2000
E.E. E.D.D.(illegible),"

31. Continuing on the above even more telling was the fact that this same E. E. had gone and recorded the meter reading at the Complainant's connection on 24-08-'00 itself so where was then the question of the P. T. being made direct? Despite these obvious fallacies no remedial action was taken by any of the competent authorities of the Licensee or even by the learned Forum to arrive at facts.
32. It is, therefore, clear that the Respondents' case so far examined was very tenuous on all such grounds. It was perhaps for this reason that an emphasis on applying the Limitations Act was being put instead of examining the case on merits.
33. The grounds on merits that completely over turn the assessment shall now be as follows: firstly, the substation Log Sheets accounts as per Paras 4 to 7, which were duly signed by the

concerned officials clearly show that there was no supply to the Complainant's factory even after the shut down was removed on 30.08.2000 at 13:12 hrs and that the supplies to the Complainant's unit were restored only at 21:59 hrs of 2.09.2000. The concerned E.E could have verified the facts from the Log Sheets of the 132 kV Substation whether in fact there was direct supply to the Complainant's factory after the P.T break down had occurred on 30.8.2000 till a healthy P.T was installed on 2.9.2000, but he did not do so. So he raised an assessment bill without verification of facts and thus did so without applying his own mind to it.

34. Going further into the grounds of the learned counsel of the Licensee's contention that there was a direct supply after the P.T. burst on 30-08-'00, which go to refute it are the facts that the counsel had completely ignored the Meter Sealing Certificates No. 1512 dated 30.8.2000 and No. 1513 dated 2.9.2000. These certificates made no mention that the Complainant was given "direct supply". Rather the AE Meters records that CT – PT chamber front cover was opened after opening the 33kV jumpers (connectors). Since the connectors were opened there was no supply to the consumer hence the remark by the A.E.(M) "No display in meter". Both the certificates have been signed by the A.E. (Meters) which is clear enough and by the S.D.O. (Distribution) clearly so in one certificate and in all probability in the other one also as also by the Complainant or his representative. What stood admitted by both parties was that these were authentic.
35. The A.E.(M) had also recorded in the above sealing certificate of 30-08-2000 that his inspection was made as per written request of the Complainant and telephonic instructions from the Executive Engineer, Electricity Test Division, Srinagar and both were informed of the action taken accordingly. Since the A.E.(M) had intimated his immediate superior it establishes his bona fides as also of his sealing certificates as these were issued to all concerned. As said the Respondents had no dispute about these Certificates. So there was no ground for the Licensee to ignore the evidence provided by its own officers that ruled out any direct connection yet it imposed an assessment.
36. Then again we have the fact that while the Executive Engineer, Electricity Distribution Division, Kotdwar had initially stated vide his letter No. 753 dated 20.3.2001 to the Complainant that direct supply was given due to burning of the P.T. on 30.08.'00 hence the assessment was being made due to that (even for the predated period, i.e., from 24.08.'00 to 2.09'00), yet in his later letter to him vides 2805 dated 31.8.'01 the E.E. stated that the assessment bill was raised as per observations of the Internal Audit. That had meant that it was the Internal Auditors who had observed that the said assessment was to be done on the basis that the P.T. connections had been "made direct" but a perusal of the same as in Para 9 reveals no such directions were ever made by the Audit. All that the Audit had stated was *BLI 'V gSd ehVj esfnukd 24-8-2000 I sfn- 2-9-2000 rd fo | q mi Hkx I gh i zlkj fjdM Zugha gksi k; k A vr% fnukd 2-9-2000 I sfn- 28-9-2000 rd dsfo | q mi Hkx dsvk/kj i j jktLo fu/kj.k fd; k tkuk vi {kr Flk A----p* So here again the E. E. had made a misleading statement.
37. The Auditors had come to question the difference in reading recorded on the AE(M)'s Sealing Certificate on 2.9.'00 which was 634556 and the last reading taken at the Complainants' premises on 24.8.'00 by the E.E. himself that was 634496 giving a difference of 634556-634496 = 60 units which was to be multiplied by a factor of 30 to make a consumption of 1800 units. All that the Auditors had thus questioned was, how was it that there was a difference in reading in the Complainant's connection between the time when the last reading was taken on the day of the shut-down on 24.08.2000 and thereafter when the reading was recorded on 02.09.2000 when the connection was reconnected with the new P.T., because the period in between was being stated to be without supply.

38. It could have been explained as the Licensee's present Executive Engineer has done vide his belated letter No. 4337 dated 13.10.2006 as follows:-

"15. Before disconnection of all the consumers on CB 4 & 7 reading of each consumer (was) taken. It takes about one to two hours in taking reading of all consumers one by one and till the reading of last consumer is taken, the earlier continued to consume the electricity. Hence there was consumption in the meter after taking reading on 24.8.2000 to 2.9.2000. On 30.8.2000 when the P.T. was burnt the consumer (was) given direct supply up to the replacement of new P.T. on 2.9.2000 as confirmed vide Executive Engineer, Electricity Distribution Division, Kotdwar letter No. 753 dated 20.3.01 (Annexure-11)."

39. While the Licensee's present Executive Engineer had on one hand explained why the consumption of 1800 units accrued but on the other hand he too reverted to stating that direct supply was given on 30.8.2000, which negates the explanation that could have explained the Auditor's suspicious. His reiteration of the then Executive Engineer's contention vide No. 753 dated 20.3.2001 that direct supply was given has the potential of opening up a Pandora's Box-full of possibilities including that of the possibility of criminal collusion in theft of power by an entire team of the Licensee's Officers and officials. So unless there was convincing evidence of such collusion and criminal intent the allegation should not have been made again.
40. What the so-called "direct connections of the P.T" meant in actual effect was that the P.T had been taken off the metering circuit and the connection was then given without it, so that there would be no metering and the Complainant would have drawn un-metered power directly from the feeder-line. This would thus be a case of criminal connivance in theft of power. Before casting aspersions on the officials who had made signed entries in the Log Sheets as also upon the officers and officials who had issued the Meter Sealing Certificates Nos. 1512 dated 30.08.2000 and 1513 dated 02.09.2000, respectively, it is necessary to go into the facts again of the E.E.'s letter No. 753 / EDDK / PF dated 20.03.2001 since the Licensee's present E. E. had also asserted it to be the basis of the "direct connection" when he said "... On 30.8.2000 when the P.T. was burnt the consumer (was) given direct supply up to the replacement of new P.T. on 2.9.2000 as confirmed vide Executive Engineer, Electricity Distribution Division, Kotdwar letter No. 753 dated 20.3.01 (Annexure-11)."
41. It is however clear that when the Licensee's present E. E. asserted the contents of his predecessor's letter No. 753 of 20-03-2001 to be the basis of the assessment, it was obvious he had also not taken the pains to read what that letter had said. As was established earlier this letter was itself based on a clear falsehood when it predated the assessment of an alleged direct connection to 24. 08.2000 while it stated the purported direct connection occurred on 30-08-2000. The present E.E. is thus just as ignorant and is repeating what already stands rejected as per Paras 30 to 36 so there is no merit in his above quoted statement.
42. We are now concerned over the grounds whether a case of criminal connivance in theft of power was involved or not.

It stands established that the concerned earlier E. E.'s letter No 753 of 20-03-2001 was untenable. Also the above E. E. had made another falsehood that the Auditor's had pointed to making an assessment for an alleged "direct" P.T. connection. No such observations were made by the Auditors.

Then again the E.E. was himself duty bound to take the monthly meter reading of such Large and Heavy power consumers as that of the Complainant so if there was a direct connection on 2.09.2000 why did he take more than six and a half months to issue the assessment bill on 20.3.2001? That too alleging falsely that it was at the Auditor's behest? Furthermore, there was another question mark on the entire assessment that having given a written assurance of conducting an enquiry the E.E. never did so. It is thus found that taken in all the assessment by

the Licensee's E.E. is a clear case of not applying one's own mind in the matter and not based on facts. The assessment is therefore baseless and is thus liable to be withdrawn by the Licensee.

43. We have thus no ground to question the recorded evidence of the officials who had made entries in the Log Sheets as also the officers who had issued the Meter Reading Certificates No. 1512 dated 30.08.2000 and 1513 dated 2.09.2000 respectively, the latter having been admitted as authentic by both parties. The above recorded evidence as per the Log Sheets and Meter Sealing Certificates are thus a reliable and factual basis for rejecting the Licensee E.E.'s contention for making the said assessment as already done so earlier in the preceding Paras.
44. An allegation of direct connection if it was to carry conviction had to be based on evidence and not hearsay. In such a case as this it was impossible that a "direct connection" could be done without connivance. If the Licensee was convinced of a "direct connection", it could not have been done so without the connivance of the S.D.O. Distribution and the A.E. (Meter) who had issued the Sealing Certificates and of the J.E. Distribution who had carried out the operations to name only a few. But the learned counsel for the Respondents, and the Forum had admitted to the authenticity of the Sealing Certificates which is a document that shows the verified status of the connection at site that made no mention of either making a direct connection or of finding the same at site so there was thus no basis whatsoever in making an assessment for a purported direct connection of the P.T., as also was the fact that the present E.E. had admitted to the authenticity of the account in the Log Sheets so there was thus no factual basis either for stating there was a direct connection to the Complainant's connection from 30 -08 -2000 till 2-09-2000 or for the raising the assessment. The said assessment was therefore found to be baseless and the Licensee shall thus withdraw the same immediately.
45. As per the examination of the facts and the circumstances of the case the learned Forum for Redressal of Grievances of the Consumers, Garhwal Zone, Dehradun had erred in its decision dated 3-05-2006 holding the Complainant's Complaint before it as not maintainable when it was not so since the Forum ignored the record of the letters of protest made by the Complainant immediately after receiving the impugned bill as also that the Licensee had given a written assurance to the Complainant of making an enquiry into the matter thereby acknowledging the obvious fallacy in its earlier letter No. 753 dated 20.03.2001 whereby the Licensee had predated the assessment as also the Forum further erred in the matter of not examining the merits of the Complaint in which it was found that the Licensee had wrongly raised an assessment for the period when in fact there was recorded evidence that supply had not been given firstly due to the shut-down and secondly when the Complainant's connection had to be disconnected due to the bursting of its P.T. on 30-08-'00. Therefore, the said order of the Forum dated 3.05.06 is without merit and is set aside and furthermore the Licensee's assessment having found to have been baseless is therefore ordered to be withdrawn with immediate effect.

AWARD

Having diligently considered and examined all the facts and circumstances of the Complainants' Representation against the decision of the learned Consumers' Grievances Redressal Forum, Garhwal Zone, Dehra Dun and after giving due hearings to both parties, and having thus considered their arguments as given in the preceding paragraphs, I come to the conclusion that the decision given by the aforesaid Forum had erred in the matter of ignoring vital facts that

not only established that the Complainant had consistently and within time protested against the imposition of an assessment bill amounting to Rs. 9,03,005.25/- raised by the UPCL against the Complainant but that the examination of the facts had also established that the assessment had been made without any factual basis, therefore the said order dated 3.05.2006 is found to be without merit and is thus set aside as also that the above assessment bill shall therefore be withdrawn with immediate effect. The Licensee shall, therefore, report compliance of this Order by 28.03.07.

The Representation is thus accordingly decided.

Dated: 28-02-2007

(J.C.Pant)
OMBUDSMAN