

THE ELECTRICITY OMBUDSMAN, UTTARAKHAND

M/s Sant Steel & Alloy Pvt. Ltd.
Industrial Area Jasodharpur, Kotdwar, Distt. Pauri Garhwal, Uttarakhand.

Vs

The Executive Engineer,
Electricity Distribution Division, UPCL, Kotdwara,
Distt. Pauri Garhwal, Uttarakhand.

Representation No. 16/2007

Order

Aggrieved by the Order passed by Consumer Grievance Redressal Forum, Garhwal (Forum) on 18.09.2007, M/s Sant Steel & Alloy Pvt. Ltd., Industrial Area Jasodharpur, Kotdwar, Distt. Pauri Garhwal, Uttarakhand (Petitioner) have filed this representation which was admitted on 18.12.2007. Notices were issued to the respondents. Respondent no. 2 has contested the matter and has filed a written statement contesting the contentions of the petitioner. Rejoinder to this reply has been filed by the petitioner which has again been responded to by the respondent no. 2. This had been followed by yet another submission made by the petitioner.

2. Brief facts of the case are that the petitioner had approached the Forum with the complaint that the Load Factor Rebate admissible to him as per the tariff applicable w.e.f. 01.01.2002 has not been allowed to him by the Licensee. After considering the contentions of the two parties the Forum passed an order on 18.09.2007 rejecting the complaint. The Forum has held that this rebate is not admissible to the petitioner as he was a defaulter to UPCL on the stipulated date and that the tariff enforced from 01.01.2002 has already been quashed by the Uttarakhand Electricity Regulatory Commission (Commission)'s order dated 27.01.2004. Aggrieved by it, the present representation has been filed. It has been reiterated in this representation that the petitioner was not a defaulter and therefore rebate applicable under the tariff enforced w.e.f. 01.01.2002 should have been allowed. By not doing so the Forum has erred and in this connection it has been alleged that the Forum has not taken into account orders of the Hon'ble High Court and the Hon'ble Supreme Court while concluding that petitioner was a defaulter.

3. It has been stated on behalf of the respondent that the petitioner has defaulted in making payments to UPCL; details of dues outstanding were submitted to the Forum and are shown in Annexure 3 of the reply. According to which a sum of Rs. 6.17 crore is due under different heads shown in the annexure; the tariff effective from 01.01.2002 under which the rebate is being demanded has been set aside by the Commission vide its order dated 27.01.2004. While claiming that no dues were outstanding against him on 01.01.2002, the petitioner himself has deposited a sum of Rs. 24.13 lac on 18th, 27th and 29th October 2007 towards peak hour penalty for the period 05/2000 to 06/2003.
4. The case was argued before me on 13.08.2008. The petitioner's contention is that the dues being shown against him had been challenged by him before various Courts and being so he cannot be treated as a defaulter on account of such dues. Further that if the tariff enforced w.e.f. 01.01.2002 has been set aside by the Commission, such rebate should have been allowed under the tariff enforced from 16.09.2001 for UPPCL. UPCL's counsel has argued that the condition of the consumer not being a defaulter was applicable in the tariff effective from 01.01.2002 as well as the tariff enforced by UPPCL from 16.09.2001. Details of amounts due from the petitioner under different heads have already been submitted and their position has not been satisfactorily explained by the petitioner who is merely denying these dues. While a number of cases in the higher Courts have already been decided, the dues relating to them have not been cleared. Further no Court at any stage had stayed these dues and the petitioner therefore cannot be treated as a non-defaulter only because he has filed some such cases. The Forum has therefore rightly concluded that the Load Factor Rebate is not admissible to the petitioner.
5. I have carefully gone through the record and heard the arguments presented by both the parties. While alleging that the Forum has wrongly concluded that the petitioner was a defaulter and therefore not entitled to this rebate, the petitioner has not been able to produce a no-dues certificate or any other documentary proof of the dues claimed by UPCL having been cleared by him or having been quashed by the higher Courts. He has merely been making generalized statements and has not been able to explain that if no amount was due as claimed by him, why an amount of Rs. 24.13 lac was paid by him to UPCL in October 2007. Further the claim made before the Forum and indeed in the present representation is for the rebate due under the tariff enforced from 01.01.2002 which stands quashed by the Commission. The petitioner wants to claim such rebate under any other tariff i.e., other than the tariff enforced from 01.01.2002, such a claim would be different from the claim adjudicated upon by the Forum, and the same can be made before the Licensee with supporting evidence. Any such new claim cannot be entertained and decided upon in the present proceedings. As far as orders of higher courts are concerned, the petitioner's allegation that UPCL is not obeying them while computing the outstanding dues is a serious one. If it is indeed the case, the right

course of action for the petitioner would be to bring this matter to the concerned court's notice instead of agitating it here.

6. For reasons given above I have come to the conclusion that the petitioner has not been able to establish any factual or legal error in the impugned order of the Consumer Grievance Redressal Forum dated 18.09.2007. Accordingly this representation is hereby rejected and the impugned order dated 18.09.2007 upheld.

Dated: 27.08.2008

Divakar Dev
Ombudsman