

THE ELECTRICITY OMBUDSMAN, UTTARAKHAND

Smt. Susham, W/o Late Capt. Chaman Lal
R/o 60/4, Ansari Marg, Dehradun, Uttarakhand.

Vs

The Executive Engineer,
Electricity Distribution Division (Central), UPCL,
18, EC Road, Dehradun, Uttarakhand.

Representation No. 14/2008

Order

This is a representation filed by Smt Susham W/o Late Capt. Chaman Lal, R/o 60/4, Ansari Marg, Dehradun, Uttarakhand against The Executive Engineer, Electricity Distribution Division (Central), UPCL, 18, EC Road, Dehradun, Uttarakhand challenging the order of the Consumer Grievance Redressal Forum (Forum) Garhwal Zone dated 19.08.2008. The original representation was followed by a detailed submission dated 30.09.2008. Reply on behalf of the OP has been filed by Shri A. K. Singh, Executive Engineer, Electricity Distribution Division (Central), UPCL. The petitioner filed a rejoinder to it on 13.10.2008. Thereafter arguments of both the parties in support of their contentions were heard.

2. Brief facts of the case are that the petitioner's consumer meter no. 41683 was faulty and was replaced by another meter no. 37829 on 19.02.2000. Thereafter the petitioner claims that she was unable to make any payment for the electricity consumed by her as UPCL's bills sent from time to time were suffering from one inaccuracy or the other. Despite her best efforts, she was unable to get the corrected bill from UPCL and therefore could not make any payment. Accordingly, it has been claimed that since she could not pay UPCL on account of its faulty bills, no surcharge is payable by her. UPCL did not agree with this contention and therefore she approached the Forum with her grievance. The Forum after considering her contention passed an order on 19.08.2008 dismissing her request of waiver of the surcharge and also directed UPCL to pay her a sum of Rs. 10,000.00 on account of harassment caused to her due to these faulty bills. Aggrieved by Forum's above order she has filed the present representation.
3. UPCL has not disputed that the bills issued to the petitioner had errors but have contended that the same were of technical nature and petitioner has only used these errors as an excuse for non payment and continued to consume electricity

for over 8 years without paying anything, whatsoever. Further on more than one occasion bills were corrected but in spite of having known the correct payable amount, the petitioner never made any payment. Further the consumer connection number remaining the same, wrong meter number is not of such importance that the petitioner was unable to pay the bills, even though the meter readings of electricity consumed, have not been not disputed. It has been pointed out that Regulation No. 19(v) of the Electricity Supply (Consumers) Regulations, 1984 deals with this issue and requires the consumer to deposit the due amount and pursue the issue separately. Relevant extract of the said Regulation is reproduced below:

“In the case of the consumer disputes the correctness of any bill he shall notify the supplier in writing of the item or items disputed and the grounds of dispute, within the due date, and shall contact the local office of the supplier to get the bills corrected within time. If the said bill even then is stated be correct, the consumer shall deposit the amount of the bill within the due date and he may pursue his representation thereafter.”

4. I have carefully gone through all the papers and the arguments presented by the two parties. It is not disputed that though the meter had been changed UPCL continued to issue bills showing the old meter no. Electricity consumed during this period of more than 8 years for which the petitioner has been billed is also not disputed. It is also not disputed that the petitioner has not made any payment for such consumption. The only point of dispute between the two parties is the surcharge for such non payment of bills by the petitioner over a period exceeding eight years. The petitioner’s argument is that since UPCL failed to provide her correct bills, she was justified in and unable to make the payments and should not be now penalised by imposing surcharge. UPCL’s contention has been that the petitioner is using errors which were of technical nature merely as an excuse for non payment even when the correct amount due from her has been known. Both these aspects had been considered by the Forum and dealt with in the impugned order. During this period of over eight years the petitioner had been consuming electricity without making any payment and having any qualms on this account. This was primarily on account of old meter number having been mentioned in the bills instead of the new one, though the consumption and the consumer numbers shown in such bills are not disputed. In claiming waiver of surcharge the petitioner claims total innocence and sincerity on her part laying the blame for her non payment totally on UPCL’s failure to present proper and correct bills to her. The Forum has not accepted this plea and while awarding compensation for UPCL’s inefficiency, it has directed the petitioner to pay her dues. The petitioner has not been able to show how the above order of the Forum is factually or legally incorrect requiring corrective intervention. The petitioner has not been able to show any provision in the Act or the Regulations or internal orders of UPCL/UPSEB as per which surcharge for non payment shall not be payable in the

circumstances like in this particular case. The petitioner has tried to support her contention by quoting Section 61(d) and Section 181 of the Act and order of the Regulatory Commission dated 09.07.2004. The said provisions of the Act lay down the concerns that need to be addressed by the State Regulatory Commission by framing regulations and determining Tariffs. Section 61(d) does not even mention the word surcharge. The petitioner has relied heavily on provisions of Section 181 (2) (j), (m), (n) & (p) mentioning the word “surcharge”, and has argued that levy of surcharge on him by UPCL upheld by the Forum is in violation of these statutory provisions. This contention is faulty as these provisions stipulate framing of regulations for reduction and elimination of surcharge levied by the transmission utilities and that also in the context of open access to be provided by the distribution licensee. These provisions do not provide for or require the Regulatory Commission to reduce or eliminate surcharge levied on a defaulting consumer for non payment or delayed payment of dues. On the contrary the Tariff orders issued by the Regulatory Commission from time to time stipulate payment of surcharge by defaulting consumers and lay down the rates for calculating the same. Petitioner’s interpretation of these provisions is incorrect and does not in any way substantiate her claim. She has overlooked the essential distinction between the delayed payment surcharge and other surcharges of the kind referred to in section 181 of the Act. The petitioner has not been able to establish any factual or legal flaw in the Forum’s impugned order, there is therefore no reason for interfering with the same.

5. The facts of this case speak volumes for the rot in the billing and collection system of UPCL. The fact that the petitioner continued to get electricity regularly without making any payment on one pretext or the other without inviting any penal action for as long as eight years, shows utter callousness and total incompetence of the concerned officers. A copy of this order may therefore be sent to the Managing Director of UPCL for his information. It is hoped that the MD will go into the depth of this case and fix responsibility for non realisation of the UPCL’s dues for more than eight years, while continuing to supply power to the petitioner. However, grave as it is, UPCL’s failure in this area cannot become a licence for the petitioner to evade payment and continue to receive and consume power, year after year. Having done so for more than eight years, it is indeed audacious for the petitioner to now claim to be the victim and seek waiver of the surcharge imposed as per the applicable tariff. Such misplaced leniency or generousness would be contrary to the provisions and also the spirit of the Act, the regulations and the tariff orders passed by the Commission
6. The representation being without any merit is hereby rejected.

Dated: 12.01.2009

Divakar Dev
Ombudsman