

## **THE ELECTRICITY OMBUDSMAN, UTTARAKHAND**

M/s Children Academy Association  
Oak Hills Estate, Malsi Dehradun, Uttarakhand

Vs

1. The Managing Director, UPCL Urja Bhawan, Kanwali Road, Dehradun.
2. The Executive Engineer, Urban Distribution Division (North), UPCL, 18, EC Road, Dehradun, Uttarakhand.

Representation No. 16/2008

### **Order**

This representation has been filed by The Children Academy Association, a registered society (Petitioner) against the order passed by the Consumer Grievance Redressal Forum, Garhwal Zone (Forum) on 04.09.2008, rejecting the Petitioner's grievance pertaining to UPCL's bill dated 09.10.2003 (disputed bill). The petitioner has contended that it is a charitable organisation engaged in number of charitable activities, including running educational institutions, on no profit basis. One such institution is the school named Children Academy (Renamed Pestle Weed College), Oak Hill Estate, Mussooree Diversion Road, Malsi, Dehradun (School). The said school is being supplied electricity by UPCL through connection no 070919. On 09.10.2003 UPCL raised a bill of Rs. 6,85,381.00 on the school for the period 17.04.2000 to 19.10.2003. The Petitioner is disputing this bill on the following grounds:

- a) The bill has wrongly been prepared on the basis of tariff applicable to LMV-2 category consumers instead of LMV-4 category applicable to charitable institutions.
  - b) The bill wrongly includes a sum of Rs. 30,900.00 on account of meter rent and another sum of Rs 23,818.00 by way of surcharge for late payment.
  - c) The bill, which is for an earlier period, has been raised in violation of the provisions of section 56 (2) of the Electricity Act 2003.
2. The petitioner accordingly approached the Forum which after considering all relevant facts rejected the petitioner's complaint vide their order dated 04.09.2008. Aggrieved

by Forum's said order, the petitioner has filed the present representation. The present representation alleges that:

- a) Since the petitioner is a charitable organisation, it should have been billed as per rates applicable to LMV-4 category consumers and not as per rates applicable to LMV-2 consumers, as has been done.
  - b) UPPCL, the predecessor to UPCL, had issued a rate schedule on 09.08.2000 as per which the petitioner, being a charitable organisation, falls in LMV-4 and not LMV-2 category of the said schedule. This has not been appreciated by the Forum.
  - c) The meter rent of Rs. 30,900.00 charged is uncalled for and wrongly charged but the Forum has not appreciated the same. Similarly the Forum has failed to consider that UPCL itself having not raised this bill earlier, levy of surcharge of Rs. 23,818.00 on the petitioner for late payment is wrong.
3. UPCL did not initially file any reply to the representation but asked for the Forum's file to be called which was done and has relied on its reply filed before the Forum. Subsequently after the arguments, UPCL has given some documents by way of written arguments, which are really parawise replies to the representation. Be that as it may, UPCL's contentions are:
- a) The petitioner is not UPCL's consumer as the connection has been sought and given to principal Children Academy International School, Malsi, Dehradun and not to Children Academy Association, the petitioner.
  - b) UPCL's consumer, the said school, is not imparting education on charitable basis but is an educational institution being run on commercial basis.
  - c) UPCL is entitled and indeed bound to charge tariff as prescribed by the Regulatory Commission and the same has been done. The petitioner had been billed for this very period earlier. The disputed bill pertains only to arrears on account of a calculation error in the earlier bills, which had been raised based only on the meter readings without applying the multiplying factor. This had resulted in short charging the petitioner.
  - d) The petitioner did not have any objection to the same tariff being applied in the earlier bills, but now when the disputed bill has been raised only to correct the earlier bills without changing the tariff category, this objection is being raised.
  - e) No late payment surcharge has been levied in the disputed bill and only meter rent and electricity duty, which are payable, have been charged.

- f) The disputed bill is not in violation of provisions of section 56 (2) of the Electricity Act 2003.
4. Arguments of the two party were heard on 25.03.2009, 08.04.2009 and finally on 17.04.2009. I have gone through the documents filed by the two parties, Forum's impugned order and the arguments presented by both the parties. It is not disputed that this particular connection was sought by and given to the Principal for use of electricity in the school. It is also not disputed that during the period 17.04.2000 to 19.10.2003 the total consumption of energy was 2, 77,787 KWH as shown in the disputed bill. The petitioner's grievance is that the tariff applied in calculating this demand should have been the one applicable to charitable institutions, the meter rent and the surcharge have wrongly been charged, and that the additional demand raised through this bill is in violation of section 56(2) of the Electricity Act 2003. The issues so raised are discussed hereafter.
5. With coming into force of The Uttar Pradesh Electricity Reform Act, 1999 and later of the Electricity Act 2003 the UPCL's discretion with regard to fixing tariff for any consumer category has been done away with and this power is now vested only in the Regulatory Commission. UPPCL and later on UPCL were and are legally bound to charge from any consumer only the rates fixed by the Regulatory Commission. Such being the case, what needs to be seen is that the rates levied on the petitioner in the disputed bill are same as ordered by the Regulatory Commission or not. As listed out in Forum's impugned order, during this period tariff for electricity was revised on the dates indicated in the order. Of these, the rates enforced from 09.08.2000, 16.09.2001 and 20.09.2003 were prescribed by the Regulatory Commissions. The petitioner's claim is that since the petitioner is a recognised charitable organisation and the school is owned by it, UPCL has erred in applying the rates indicated in the Rate Schedule LMV-2 instead of Rate Schedule LMV-4 of the Commission's order. The Forum in its order has held that the applicability of a particular rate schedule is decided by the purpose for which electricity is being used by the consumer and not by the status of the user. These schedules state clearly the category of consumers on whom the rates listed in the schedule are to apply. The applicability as given in Rate Schedule LMV-2 states in the very first line that:

*"This schedule shall apply to all consumers using electric energy for .....".* It goes on further to list out the consumer categories on whom this rate is to apply and in this context mentions *".....Schools/Colleges not receiving government aid...."*

A reading of this clause supports the Forum's conclusion that the Tariff Rate applicable on any consumer is to be decided on the basis of the purpose for which electricity has been used. In this particular case electricity has been used for running the school, and UPCL has therefore rightly applied the tariff laid down in this particular schedule.

6. Petitioner's claim to applicability of LMV-4 Rate Schedule is further belied from the applicability clause of this schedule itself which states that this schedule shall apply, amongst others, to charitable institutions and trusts not covered under any other rate schedule. Since a specific rate has been prescribed for schools not receiving government aid in LMV-2 schedule, this provision of LMV-4 rate schedule excludes the petitioner's school from its applicability, notwithstanding petitioner's own status as a charitable organisation. Further it is a well settled principle in law, that if a general provision and a specific provision are not in consonance, the specific provision will override the general provision. As per this principle also a tariff specifically provide for schools will override the tariff provided for unspecified activities of a charitable organisation. If the regulatory commission had intended that the schools owned by charitable organisation should be charged as per LMV-4, nothing prevented it to state the same in the rate schedule itself. In absence of any such provision, UPCL has no choice and has correctly raised the bill based on LMV-2 schedule and the Forum has rightly upheld the same. Petitioner's contention in this regard is misplaced, does not have any force and therefore cannot be accepted.
7. As far as the surcharge for delayed payment is concerned, during the arguments, it has been clarified by UPCL that no such surcharge has been levied up to the date of raising this disputed bill and the amount of Rs. 23,818.00 shown in the bill pertains to the electricity duty. The bill having been prepared manually, this amount has been wrongly written against surcharge item. Accordingly petitioner's contention in this regard becomes in-fructuous. As far as the meter rent is concerned UPCL has again clarified that the same has been calculated as per the rate schedule and the petitioner, while disputing it, has not been able to establish anything to the contrary.
8. The petitioner has also claimed that this amount raised in the disputed amount cannot be now claimed as per provisions of section 56 (2) of the Electricity Act, 2003. The Forum has not accepted this contention. In this connection my attention has been drawn to a similar case decided by the Maharashtra Ombudsman and upheld by the Hon'ble High Court of Bombay vide AIR 2007 Bombay 52, F.I. Rebello and Anoop V. Mohta. JJ. In this case also the bills for an earlier period were corrected by applying the multiplying factor mistakenly left out in the earlier bills, after being pointed out by the audit. The Hon'ble High Court held that demanding this additional amount on account of this correction is not barred by section 56 (2). The Forum's conclusion in this regard again cannot be faulted and is indeed accordance with the above findings of the Hon'ble High Court.
9. For reasons given above the Petitioner's representation is without merit and is hereby rejected.

Dated: 18.05.2009

Divakar Dev  
Ombudsman