

## THE ELECTRICITY OMBUDSMAN, UTTARAKHAND

Shri Abrar Ahmed,  
S/o Shri Saifulla Ansari, Moh Niyazganj P.O. & Distt. Almora, Uttarakhand

Vs

1. Appellate Authority, Uttaranchal Power Corporation Ltd. Haldwani, District Nainital.
2. The Executive Engineer, Electricity Distribution Division, UPCL, Almora.

Representation No. 17/2008

### Order

This representation has been filed by one shri Abrar Ahmed S/o Late Shri Saifullah Ansari, Moh. Niyazganj, P.O. & Distt Almora (Petitioner) against the demand of Rs. 55,728.00 (later reduced to Rs. 37,134.00) raised by Executive Engineer, UPCL, Haldwani/Almora, the respondent. Brief facts of the case are given below:

2. The petitioner has been a consumer of UPCL for around 15 years and has a 2 KW connection no 033027 in his name. The petitioner's meter had not been working properly and the petitioner was therefore being billed on IDF basis. According to the petitioner he had been requesting UPCL to replace the defective meter and bill him on consumption basis, which was not done in spite of assurances given in this regard. Even the defective meter got stolen on 13.12.2007 and petitioner informed UPCL of the same and also gave an application to the Sub Divisional Magistrate, who marked the same for further action to the SHO of the concerned Police Station. UPCL having failed to replace the defective meter has alleged that on a surprise inspection of the petitioner's premises he was found drawing Power directly and thus using electricity in an unauthorised manner and the penalty of the amount given above was imposed for such unauthorised use. It has been alleged by UPCL that the petitioner was stealing electricity directly from UPCL's network and on its detection he is only trying to protect himself by claiming that the meter got stolen on 13.12.2007. The petitioner's claim that intimation of the theft of meter was given by him to UPCL has been denied by the respondent who has also alleged that no FIR relating to this theft was filed by the petitioner.
3. As stated earlier a sum of Rs. 55,728.00 was demanded from the petitioner by way of penalty for unauthorised use of electricity. This amount was subsequently reduced to Rs. 37,134.00. UPCL's action was questioned by the petitioner before the Consumer Grievance Redressal Forum, Kumaon region, Haldwani (Forum). The Forum passed

an order on 26.07.2008 reducing this amount by half. Aggrieved by the Forum's decision the present representation has been filed. The representation was admitted and reply to the same has been filed by Executive Engineer, Electricity Distribution Division, Almora. A rejoinder to this reply was filed by the petitioner on 08.04.2009. The petitioner was also permitted not to be present on every date of hearing.

4. While the petitioner claims that the electricity meter installed in his premises had not been working and got stolen on 13.12.2007, the respondent's case is that the petitioner was actually indulging in theft/unauthorised use of electricity and this was detected in a raid on his premises carried out on 08.01.2008. According to the respondent the petitioner's plea of theft of the meter is only an attempt to cover up the theft he was indulging in.
5. Cases of theft and unauthorised use of electricity are to be dealt with in accordance with para 5.1 and 5.2 of Uttarakhand Electricity Regulatory Commission (The Electricity Supply Code) Regulations 2007 as amended on 28.03.2008. While providing for strict and prompt action against persons stealing electricity, these Regulations stipulate a transparent and cautious approach to prevent any hasty or arbitrary conclusion about such theft. Accordingly Para 5.1.1 (7) envisages that if sufficient evidence is found to establish direct theft of energy, the supply will be discontinued, all material evidence collected and within two working days of the inspection a case shall be filed in the designated special court as per provisions of section 135 of the Electricity Act 2003. Other provisions in this Regulation deal with cases of suspected theft of electricity and in such cases if the consumption pattern for last one year is not less than 75% of the consumption assessed on the basis of connected load and normative consumption given in the Tariff Order, no further action is to be taken. On the contrary if the consumption so assessed is less than 75%, the procedure enumerated in paras 5.1.1 (11) and 5.1.2 is to be followed. Of these paras 5.1.2 (2) to (4) are of particular importance and the same are reproduced below:

*(2) The Licensee shall give due consideration to the facts submitted by the consumer and pass, with 3 days, a speaking order as to whether the case of theft is established or not. Speaking Order shall contain the brief of inspection report, submissions made by consumer in his written reply and oral submissions during personal hearing and reasons for acceptance or rejection of the same.*

*(3) In case of the decision that the case of theft is not established, no further proceedings shall be required and connection shall be restored through original meter.*

*(4) Where it is established that there is a case of theft of energy, such officer of the licensee, as authorized for the purpose by the Commission or any other officer of the licensee, as the case may be, of the rank higher than the rank so authorized may, upon detection of such theft of electricity, immediately disconnect the supply of electricity and seize all material evidence including wires/cables, meter, service line etc., from*

*the premises and such officer of the licensee shall lodge a complaint in writing relating to the commission of such offence in police station having jurisdiction within twenty-four hours from the time of such disconnection.*

*(4A) The licensee may also file a case of theft in designated special court as per provisions of Section 135 of the Act. The licensee shall also conduct assessment in accordance with clause (4) of sub-regulation (5.2.3) of regulation 5.2 dealing in unauthorized use of electricity (UUE) and serve on the consumer under proper receipt. The consumer shall be required to make the payment within 7 days of its proper receipt.*

The procedure to be followed for assessing such defaulting consumer's consumption is listed in para 5.2.3 of these Regulations. Here again paras 5.2.3 (2) and (3) are of particular importance and the same are reproduced below:

*(2) Licensee shall give due consideration to the facts submitted by the consumer and pass, within thirty days from the date of such notice, a speaking order as to whether the case of UUE is established or not. Speaking Order shall contain the brief of inspection report, submissions made by consumer in his written reply and oral submissions during personal hearing and reasons for acceptance or rejections of the same.*

*(3) In case UUE is not established, further proceedings shall be discontinued and case of UUE shall be dropped immediately.*

6. These provisions ensure that while real cases of theft of Electricity are dealt with effectively, bona fide consumers do not get harassed under this pretext and therefore these provisions inject such transparency in the entire proceedings as is possible. In the present case it is not clear whether while carrying out the inspection of petitioner's premises on 08.01.2008, and in taking follow up actions, important requirements of the Supply Code referred to above have been met and objective and speaking orders issued in accordance with these provisions. Since neither the petition nor the reply filed by respondent throws any light on this issue, Respondent no. 2 ie Executive Engineer, UPCL, Almora was asked appear personally on 16.06.2009 and bring with him following documents/information:

- a) The date on which service connection no 033027 was given and its address.
- b) Copies of orders regarding appointment of authorized officers for issued under para 5.1.1 (1) and appointment of assessing officers under para 5.2.1 (1) of UERC (The Electricity Supply Code) Regulations, 2007.
- c) Copy of the inspection report required to be prepared as per para 5.1.1 (4) and 5.2.1 (4) of the above Regulation, 2007.
- d) Details of action taken under para 5.1.1 (7) of the above Regulation 2007.

- e) Copies of final orders passed as per para 5.1.2 (2) and para 5.2.3 (2) of the above Regulation 2007.
- f) Date since when the petitioner is being billed on IDF basis.

However respondent no. 2 did not abide by these directions and failed to appear with the above information on the due date. I am therefore left with no option but to draw adverse conclusions with respect to these issues, unless belied by the documents on file.

7. I have carefully gone through record, pleadings of the two parties and the order passed by the Forum on 26.07.2008. The Forum in its order has already concluded that:

- a) It is agreed between the parties that no FIR pertaining to the theft of the meter was launched but a written application to this effect was given to the Sub Divisional Magistrate and information of the same was given to the respondent.
- b) The consumer was being regularly billed on IDF basis even prior to the date of the meter theft and the date of the inspection and the consumer had been regularly paying the same.
- c) However even in absence of the meter, the petitioner's action in drawing electricity directly was wrong and has reduced the penalty amount by 50%.

8. While faulting the consumer for the alleged misconduct, his action has to be seen and evaluated not only in the context of the Regulations and provisions of the Act but also the level and extent of UPCL's own adherence and compliance of the same. One cannot take a one-sided view and find fault with the consumer, even for a technical and perhaps unavoidable deviations from rules, while overlooking completely UPCL's continued failure to abide by the same. In the present case, some failures of UPCL which have substantive bearing on the matter under consideration are listed below:

- a) As stated earlier UPCL had classified the consumer's meter as defective and has been billing the consumer on IDF basis for at least 12 months. In this context it may be recalled that Para 3.2 (1) of the Supply Code specifically prohibits such billing and states that... *These Charges shall be liveable for a maximum period of three months only during which time the licensee is expected to have replaced the defective meter...* Para 3.1.4 (4) of the Supply Regulations also stipulates that a defective meter shall necessarily be rectified within a maximum period of 3 months.
- b) While theft of the meter was reported to the SDM and the UPCL's local office on 14.12.2007, till 08.01.2008, that is the date of inspection, no action was taken

for restoring the consumer's supply. Considerable emphasis is being laid on the petitioner not filing the FIR, ignoring the fact that his bona fides on this account cannot be questioned after his reporting the theft to the SDM and to the UPCL. The sub divisional magistrate being a superior authority, the petitioner having reported the matter to him instead of the local police does not make his action suspect or unacceptable. It is a matter of common knowledge that for an ordinary man it is not easy to get the police to register an FIR even in more serious crimes and often intervention from higher authorities is required. In absence of any action on part of UPCL, it does not seem reasonable to fault the petitioner for having taken direct supply (If he indeed did so). In view of UPCL's failure to respond for so long, the only other option with the petitioner was to live without electricity supply indefinitely, hoping that UPCL will act. Such expectation seems highly unrealistic and totally one sided and contrary to the spirit of law. In this context the intention of law is reflected in para 3.1.5 (1) of the Supply Code dealing with burnt meters which stipulates that "*....the Licensee shall restore connection in 6 hours upon receiving the complaint by bypassing the burnt meter....*".

Similarly Para 3.1.5 (4) states that:

*In case the meter is found burnt and there is reason to believe that an official of the Licensee gave a direct connection, pending replacement of meter, a case of theft of energy shall not be booked. Consumer's complaint for replacement of burnt meter or the complaint regarding disruption in supply of energy shall be considered sufficient for this purpose.  
(Emphasis added)*

It is clear from above provisions that the Regulations do not envisage that the consumer should remain without supply indefinitely till the licensee chooses to act. In fact they stipulate that the Licensee must restore supply through direct connection, if necessary and also place a limit on the time within which the licensee must do so. In the present case though UPCL was aware that the meter is not working for at least 12 months and the parties have accepted that intimation of the meter theft had been given by the petitioner, but UPCL did not restore supply even after 26 days when the inspection is said to have been done. In this particular case direct supply whether given by UPCL's staff or taken by the petitioner as alleged, is of no consequence because it was in UPCL's knowledge that the petitioner's meter had not been working and still UPCL had been billing the petitioner on IDF basis continuously for more than a year and had failed to replace the same for such abnormally long period. Such being the case the presence or absence of a non functional meter did not in any way alter the situation or benefit the petitioner or cause any loss to UPCL. When the petitioner was being already given supply without measuring the same, no material difference in this situation occurs by the meter not being there. In effect, when the petitioner was already been given unmetered supply by UPCL

itself, the petitioner had no reason for and got no additional advantage by taking the supply directly, as has been alleged. It is therefore not clear what considerations could have motivated him to do so. UPCL clearly has to put its own house in order before faulting individual consumers for failing to abide by laid down norms.

- c) Proper care has to be exercised before concluding that a consumer is actually guilty of theft of electricity. Hasty conclusions based only on technical or apparent violations are not what the law envisages. Chapter 5 of the Supply Code dealing with the issue of theft and unauthorised use of electricity clearly protects consumers from any hasty conclusion about such theft. Even in case of the seals on the meter missing or having been tampered with or the glass having been broken, it is stipulated in Para 5.1.1 (6) that no case for theft shall be booked only on account of these defects unless corroborated by consumption pattern and other evidence. This particular Para which is of importance in the present case is reproduced below:

*No case for theft shall be booked only on account of first seal on the meter missing or tampered or first instance of breakage of glass window, unless corroborated by consumption pattern of consumer and such other evidence as may be available. However any subsequent missing or tampering of seal or breakage of glass window shall be constructed as suspected case of theft of energy.*

9. There is nothing on record to suggest that the concerned officers have tried to check the petitioner's past consumption pattern or to corroborate the alleged theft with any other evidence. Even on being given an opportunity to show that the prescribed procedures have been followed while proceeding against the petitioner, no such evidence has been filed. As per the documents on file, UPCL itself had been giving "unmetered" supply and had been billing the petitioner on IDF basis for more than a year. As per provisions of the Supply Code reproduced earlier in this order, all such facts have to be taken into account and evaluated by the concerned officer who is also required to pass a speaking order for concluding that the consumer has been indulging in theft. UPCL's failure to take all relevant facts into account and the petitioner's reply to the charges and pass these orders makes UPCL's conclusion about petitioner's conduct hasty and arbitrary. This is not a mere technical procedural error but a substantive deviation from the laid down procedure compromising seriously the requirements of objectivity and transparency thereby vitiating outcome of the entire action. Inexplicably, while drawing such hasty conclusion for assessment purposes, no action for filing a report with the police or the special court was taken even though the Supply Code specifically requires it to be done and leaves no discretion to the concerned officer in this matter. For billing purposes, the concerned officer has concluded that the petitioner was stealing electricity but not for initiating criminal action by reporting the matter to police who would have investigated the matter in its

entirety. Such selective conclusions and their resultant actions cannot be justified particularly when the same are in blatant violation of specific regulations that have been framed. The Respondent has obviously erred seriously in this regard.

10. UPCL's failure to follow the procedure laid down in the Act and the Regulations framed there under deprives the action taken against the petitioner of objectivity and transparency and the same is therefore seriously flawed. Accordingly this demand raised by UPCL against the petitioner is arbitrary and without basis and the same can therefore not be upheld. UPCL's demand of Rs. 37,134.00 from the petitioner is therefore hereby set aside. If any part of this amount has already been paid by the petitioner, the same shall be refunded or adjusted against future bills along with interest payable on consumer security deposits. Supply to the petitioner through a proper meter shall be resumed forthwith, if not already done.

Dated: 24.06.2009

Divakar Dev  
Ombudsman