

THE ELECTRICITY OMBUDSMAN, UTTARAKHAND

M/s Siddheshwari Paper Udyog Ltd.
Moradabad Road, Kashipur, Distt. Udham Singh Nagar, Uttarakhand

Vs

1. The Executive Engineer, Electricity Distribution Division, Uttarakhand Power Corporation Ltd., Kashipur, Distt. Udham Singh Nagar, Uttarakhand.
2. The Managing Director, Uttarakhand Power Corporation Ltd., Urja Bhawan, Kanwali Road, Dehradun.
3. Consumer Grievance Redressal Forum, Kumaon Region, Haldwani, Nainital, Uttarakhand

Representation No. 04/2009

Order

This representation has been filed by one M/s Siddheshwari Paper Udyog Ltd. Moradabad Road, Kashipur, Distt. Udham Singh Nagar (Petitioner) against non redressal of its grievance by Consumer Grievance Redressal Forum Kumaon Zone, Haldwani (Forum) even after lapse of seven months.

2. Brief facts of the case are that the petitioner had a grievance against respondents no. 1 & 2 pertaining to unauthorized realization of Rs. 3.96 lacs from him by way of system loading charges even though the same had already been abolished by Uttarakhand Electricity Regulatory Commission (Commission). The Forum after hearing the matter passed an order on 25.04.2009 which was signed by two members and staying the proceedings on the ground that in another case the Hon'ble High Court had stayed the Forum's order. The third member of the Forum passed a dissenting order allowing the complaint and directing UPCL to refund the same. In view of the stay order passed by the other two members, this order of the dissenting member could not be implemented. Aggrieved by the self imposed stay by two members of the Forum, the petitioner has filed the present representation.
3. The petition has been contested by respondents no. 1 & 2. The respondents have tried to justify imposition of system loading charges and have stated that the Forum has

rightly decided to await outcome of the proceedings before the Hon'ble High Court in matter relating to M/s Vishwakarma Paper & Board Ltd. in W.P. No. 1764 of 2008.

4. I have carefully gone through the documents and the arguments presented by the two parties. The matter under consideration in these proceedings is only whether the order of two members of the Forum voluntarily staying the proceedings is valid and just. The merits of realization of such charges or their abolition by the Commission are not required to be determined here. That is a matter to be settled between the licensee and the Commission amongst themselves or in an appropriate court. Accordingly the same is not being examined in these proceedings although submissions on the issue have been made by the parties.

5. The impugned order of the Forum states that:

“Even though the interim stay granted in the case of M/s Vishwakarma Paper and Board Ltd; in WPMS No. 1764 of 2008 is not binding in the case of M/s Sidheshwari Paper Udyog Ltd; But it will be just and proper to stay the proceeding in the present case till a final decision is passed by the Hon'ble High Court in the case of M/s Vishwakarma Paper and Board Ltd. As regards the effective date from which system loading charges stands abolished.

Accordingly the proceedings in this case are stayed at present. Put up on 27.06.2009 for further orders.”

6. It is clear from the above that the Forum was aware of the fact that the stay order passed by the Hon'ble High Court in the case of M/s Vishwakarma Paper & Board Ltd. was not applicable to the proceedings before them. However the Forum exercised caution and refrained from deciding the matter on merits, even though orders on merits have been passed in some other cases other cases involving the same issue. While doing so the Forum seems to have overlooked its own obligations under law. Section 42 (5) of the Electricity Act stipulates that the redressal of grievances of the consumers will be done in accordance with the guidelines specified by the Commission. These guidelines are contained in Uttarakhand Electricity Regulatory Commission (Guidelines for Appointment of Members and procedure to be followed by the Forum for Redressal of Grievances of the Consumers) Regulations, 2007 (Regulations) Para 3 (18) of these regulations is reproduced below:

“The Forum shall decide the Complaints received expeditiously and shall communicate its decision to the Complainant within a period not exceeding 60 days of the receipt of the Complaint. The Forum shall give the reasons in support of its decisions.”

7. It is clear that the Forum is duty bound to decide the matter before it within the prescribed time. While this time limit will stand relaxed if the hearing is stayed by a higher court, the Forum does not have the discretion to defer its decision indefinitely on its own accord. In the present case, the Forum has failed to abide by the above requirement of these Regulations even though the dissenting member has rightly pointed out the likely outcome of the majority position.. The Forum was fully aware

that the Hon'ble High Court's has not stayed the petitioner's case, but it still decided to not dispose off the complaint within the stipulated period.

8. For reasons given above the order passed by the two members of the Forum on 25.04.2009 staying the proceedings before them is in violation of the provisions of the Regulations and cannot be upheld. The Forum is accordingly directed to consider and dispose off the petitioner's complaint on merit within 45 days of receipt of this order. The respondents no. 1 & 2, may if they so like obtain appropriate directions pertaining to this case also from the Hon'ble High Court and file them before the Forum, anytime before passing of the final order by the Forum. Such directions if issued will clearly have precedence over this order

Dated: 04.09.2009

Divakar Dev
Ombudsman