

THE ELECTRICITY OMBUDSMAN, UTTARAKHAND

M/s Doiwala Sugar Company Limited, Doiwala, Distt.
Dehradun, Uttarakhand.

Vs

The Executive Engineer, Electricity Distribution Division,
Uttarakhand Power Corporation Ltd., Shail Vihar, Rishikesh,
Distt. Dehradun.

Representation No. 07/2009

Order

This representation has been filed by M/s Doiwala Sugar Company Ltd. (the petitioner) against the order passed by the Consumer Grievance Redressal Forum Garhwal Zone (Forum) on 19.03.2009, rejecting its complaint against Uttarakhand Power Corporation Ltd. (UPCL), the respondent in these proceedings. The representation has been contested by the respondent through its written statement as well as verbally during arguments.

2. Brief facts of the case are that the applicant has been a client of the respondent and is engaged in business of manufacturing sugar. The applicant and the respondent are government owned companies. It is not disputed that officers of UPCL installed a check meter on the applicant's premises on 20.05.2007, where after another check meter with separate CT was installed on 23.06.2007. On 18.08.2007 the old meter was removed as the same was found recording 72.96% less consumption. Based on this, UPCL billed the applicant an additional amount of Rs 66,22,842.00, for the period 15.01.2004 to 18.08.2007. Aggrieved by this, the applicant approached the Forum, who passed an order on 19.03.2009 rejecting the applicant's complaint. The applicant has now filed the present representation against the Forum's above order.
3. I have carefully gone through the record and the arguments presented by both the parties. A reading of the impugned order shows that since the findings of the test meter installed on 20.05.2007/23.06.2007 have not been disputed the Forum has noted that at the time of testing, the meter that had been installed in the applicant's premises was recording 72.96% less consumption. The Forum has then accepted UPCL's stand that this under recording was taking place from 15.01.2004, though the applicant had questioned this position, and filed documents like the average consumption and MRI reports of different dates. The Forum has not gone into these and has not given its reasoning for arriving at the conclusions reached on this issue. Instead the Forum has accepted, without any scrutiny, UPCL's claim that this under recording was taking place from a specified date, i.e.15.01.2004. The MRI report filed by the respondent has been accepted as final and convincing evidence of this claim. An MRI report is a report generated by the Meter Reading Instrument and bills for industrial consumer like the applicant are required to be prepared on the basis of the MRI readings only. The forum has not examined and cross

checked this particular MRI report with similar reports prior to 18.08.2007 to determine as to how and why the earlier reports have not shown these deficiencies in the applicant's meter. There has been no attempt to reconcile the findings of the disputed MRI report and MRI readings taken earlier or later even though some of these were filed before the Forum.

4. During these proceedings an attempt was made to ascertain whether the reports generated in August 2008 do establish without any reasonable doubt that the applicant's meter was committing the same mistake detected on 18.08.2007 continuously, to the same extent and from a precise date which is more than three years prior to testing. The report filed on behalf of UPCL evades this specific issue and is also conditional. Effort was also made to obtain validation of UPCL's above claim from other independent sources also but without success.
5. Without scrutinising merits of the claim that the under recording detected on 18.08.2007 was actually taking place from 15.01.2004, the Forum has got involved with the legality and applicability of section 56 (2) of the Electricity Act 2003 in the present matter. After briefly enumerating the case law, the Forum has concluded that the prohibition under section 56 (2) does not apply in this case. Strangely while examining the legality of UPCL's action, the Forum has totally overlooked the provisions of Section 50 of the Electricity Act, 2003 and the provisions of the Uttarakhand Electricity Regulatory Commission (The Electricity Supply Code) Regulations, 2007 hereafter referred to as the Supply Code. These regulations have been framed and notified by the Commission in exercise of powers conferred on it under Section 181 read with Section 50 of the Electricity Act 2003. Accordingly these regulations are binding on all the parties, including UPCL, the Licensee. The issue of defective meters has been unambiguously dealt with in these regulations. Section 50 of the Electricity Act, 2003 and Regulation 3.1.3 (6) of the Supply Code deals with the issues arising out of a meter found recording erroneously on testing and the same are reproduced below:

Section 50.— *The State Commission shall specify an electricity supply code to provide for recovery of electricity charges, intervals for billing of electricity charges, disconnection of supply of electricity for non payment thereof, restoration of supply of electricity, measures for preventing tampering, distress or damage to electrical plant or electrical line or meter, entry of distribution licensee or any person acting on his behalf for disconnecting supply and removing the meter, entry for replacing, altering or maintaining electric lines or electrical plants or meter and such other matters.*

Regulation 3.1.3 (6) *“When the meter is found to be slow beyond permissible limits, as specified in Rule 57 (1) of the Indian Electricity Rules, 1956 and the consumer does not dispute the accuracy of the test, the Licensee/consumer, as the case may be, shall replace/rectify the defective meter within 15 days of testing. The consumer shall pay the difference due to the defect in the meter at normal rates, based on percentage error, for a maximum period of not more than 6 months or less depending on period of installation of meter prior to date of test and up to the date on which defective meter is replaced/rectified.”*

While framing these regulations the Commission presumably would have taken into account the requirements of Section 56 (2) of the Electricity Act and the technical

capabilities and limitations of the equipments available with UPCL for recording correct consumption of individual consumers including its history. The Act or the Supply Code does not permit UPCL or Forum to disregard or to deviate from these unambiguous and categorical provisions. Whether these Regulations are in harmony with the provisions of the Electricity Act 2003, the case law cited above or not, is an issue to be examined and decided upon not by UPCL or the Forum but only by such authorities as may be empowered under law to do so. As stated earlier these regulations have the force of the Electricity Act 2003 behind them and are binding not only on UPCL but also on the Forum and indeed the undersigned. There was no need or occasion for the Forum to go beyond these regulations and get involved with interpreting provisions of The Electricity Act, 2003, and arrive at conclusions that are in clear conflict with the above provisions of the Electricity Act, 2003 and the Supply Code. The Forum has definitely erred in contravening the above provisions and the impugned order is therefore not maintainable and liable to be set aside.

6. For reasons given above the Forum's order dated 19.03.2009 as well as UPCL's disputed bill for Rs. 66,22,842.00 are both hereby set aside. UPCL is directed to prepare a fresh bill based on the findings of the test meter strictly in accordance with Regulation no. 3.1.3 (6) of the Uttarakhand Electricity Regulatory Commission (The Electricity Supply Code) Regulations, 2007 and send it to the applicant within 30 days of this order.
7. UPCL's action in raising the disputed bill in clear violation of the Supply Code has resulted in considerable harassment to the applicant. This has been further compounded by UPCL contesting the application before the Forum and later before the undersigned instead of correcting its original mistake. UPCL's conduct all along has been in total violation of the Supply Code and is most unfortunate. The matter may therefore be brought to the notice of the Secretary of the Electricity Regulatory Commission for such action against the Licensee and its concerned officers as it may deem fit.

Dated: 07.06.2010

Divakar Dev
Ombudsman